TRANSCRIPT OF RECORD.

UNITED STATES
COURT OF APPEALS

FIFTH CIRCUIT.

No. 15,918

EDWIN K. ATWOOD, ET AL.,

Appellants,

versus

HUMBLE OIL & REFINING COMPANY,

Appellee.

Appeal from the United States District Court for the Southern District of Texas.

(ORIGINAL RECORD RECEIVED JAN. 13/56.)

U. S. COURT OF APPEALS
FILED
MAY 3 1956

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APPELLANTS' DESIGNATION AS TO PRINTING RECORD

Filed January 27, 1956.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 15918.

EDWIN K. ATWOOD, et al.,
Plaintiffs,

Versus

HUMBLE OIL & REFINING COMPANY,
Defendant.

Pursuant to Rule 23 of the Rules of the United States Court of Appeals for the Fifth Circuit, the undersigned, Edwin K. Atwood, et al., Plaintiffs-Appellants, do hereby designate the following portions of the record to be printed:

1. Defendant's Motion to Dismiss and for More Definite Statement.

2. Letter dated September 7, 1955, from Honorable Ben C. Connally, Judge, to Wm. E. Junell and Felix A. Raymer.

3. Pre-Trial Order (Proposed by the Court but never entered).

4. Letter dated September 14, 1955, from Wm. E. Junell to Honorable Ben C. Connally, Judge.

5. Letter dated September 15, 1955, from Wm. E. Junell to Honorable Ben C. Connally, Judge.

6. Amendment to Plaintiffs' Original Petition and Complaint.

7. Letter dated October 25, 1955, from V. Bailey Thomas, Clerk, to Wm. E. Junell, Thomas Hart Fisher and Felix A. Raymer.

8. Letter dated November 9, 1955, from V. Bailey Thomas, Clerk, to Barrow, Junell & Robertson, Thomas Hart Fisher and Felix A. Raymer.

9. Order of Dismissal.

10. Motion for Leave to File Affidavit of Thomas Hart Fisher in Opposition to Defendant's Motion to Dismiss.

11. Affidavit of Thomas Hart Fisher in opposition to Defendant's Motion to Dismiss, with Court's Notation thereon Denying Leave to file Affidavit.

12. Plaintiffs' Motion to Set Aside, Alter or Amend Order of Dismissal.

13. Notice of Appeal.

14. Clerk's Certificate.

And Plaintiffs-Appellants further move the Court to cause the printer to bind in and make a part of the printed record in this appeal in this Court, at the commencement thereof and immediately prior to the

printing of "Defendant's Motion to Dismiss and for More Definite Statement", the printed original Petition and Complaint which appears as a part of the original record deposited in this Court; and Plaintiffs-Appellants have forwarded to this Court 30 copies of said original Petition and Complaint for such purpose.

Due notice of service of this Designation upon the opposing party by mailing to its counsel is attached hereto.

Respectfully submitted,
EDWIN K. ATWOOD, et al.,
Plaintiffs-Appellants,
By THOMAS H. FISHER,
Their Attorney

State of Illinois,
County of Cook. ss..

Beatrice McCaffrey, being first duly sworn, on oath deposes and says that she served a copy of the foregoing "Designation of Portions of the Record to be Printed" on Mr. Felix A. Raymer, Attorney for Defendant, by inserting a true copy of said Designation in an envelope addressed to said Attorney for Defendant at P.O. Box 2180, c/o Humble Oil & Refining Company, Houston 2, Texas, and by depositing said envelope, duly sealed, with postage prepaid, in the United States Mail Chute at 135 South La Salle Street, Chicago, Illinois, on the 25th day of January, 1956, before the hour of 5:00 o'clock P.M.

BEATRICE McCAFFREY.

Subscribed and sworn to before me this 25th day of January, 1956.

BETTY FORD,
Notary Public.

APPELLEE'S DESIGNATION AS TO PRINTING RECORD.

Filed January 30, 1956.

In The United States Court of Appeals For the Fifth Circuit, New Orleans.

Edwin K. Atwood, Et Al., Plaintiffs-Appellants,
vs. No. 15918,
Humble Oil & Refining Company, Defendant-Appellee.

Under the provisions of Rule 23 of this Court, Humble Oil & Refining Company, Defendant-Appellee, designates the following portions of the record to be printed, in addition to the designation heretofore filed by Appellants-Appellees:

1. Defendant's Brief in Support of its Motions to Dismiss and for More Definite Statement, together with Exhibits "A", "B", "C-1", "C-2", "D-1", "D-2", "D-3", and "E" (Transcript pp. 136-269).

2. Letter, dated June 17, 1955, from Wm. E. Junell to Honorable Ben C. Connally, Judge. (Transcript p. 356).

3. Letter dated July 5, 1955, from Adele Landers, Secretary to Judge Connally to Wm. E. Junell. (Transcript p. 358).

4. Letter dated July 8, 1955, from Wm. E. Junell to Mrs. Adele Landtrs, Secretary to Judge Connally. (Transcript p. 359).

5. Letter dated August 23, 1955, from V. Bailey Thomas, Clerk, to Barrow, Junell & Robertson and Felix A. Raymer. (Transcript p. 360).

6. Letter dated September 20, 1955, from Felix A. Raymer to V. Bailey Thomas, Clerk. (Transrript p. 377).

7. Letter dated September 19, 1955, from Felix A. Raymer to Thomas Hart Fisher. (Transcript p. 385).

8. Letter dated September 20, 1955, from Felix A. Raymer to Honorable Ben C. Connally, Judge. (Transcript p. 427).

9. Letter dated September 21, 1955, from Honorable Ben C. Connally, Judge, to Felix A. Raymer. (Transcript p. 429).

10. Letter dated September 27, 1955, from Felix A. Raymer to Thomas Hart Fisher. (Transcript p. 431).

11. Letter dated September 27, 1955, from Felix A. Raymer to Honorable Ben C. Connally, Judge. (Transcript p. 432).

12. Letter dated September 27, 1955, from Felix A. Raymer to V. Bailey Thomas, Clerk. (Transcript p. 433).

13. Letter dated November 15, 1955, from Felix A. Raymer to V. Bailey Thomas, Clerk. (Transcript p. 438).

14. Certified copy of Local Rule 22, United States District Court, Southern District of Texas. (Transcript p. 441).

15. Letter dated November 18, 1955, from V. Bailey Thomas, Clerk, to George T. Barrow. (Transcript p. 442).

FELIX A. RAYMER,
(Felix A. Raymer),
Counsel for Defendant-Appellee,
HUMBLE OIL & REFINING COMPANY.

Humble Building,
P. O. Box 2180,
Houston 1, Texas.

Affidavit of Counsel.

The State of Texas,
County of Harris.

Before Me, the undersigned authority, on this day personally appeared Felix A. Raymer, Counsel for Humble Oil & Refining Company, Defendant-Appellee, in the above numbered and captioned suit, and on his oath stated to me that he had deposited a copy of the above and foregoing designation of Additional Portions of the Record to be Printed in the United States mail with sufficient postage thereon to assure delivery and directed to Honorable George T. Barrow, Counsel for Plaintiffs-Appellants in the above captioned suit, whose address is 337 Esperson Building, Houston 2, Texas.

FELIX A. RAYMER,
Affiant.

Subscribed and Sworn to Before Me this the 27th day of January, A. D., 1956.

CORA P. PERKINS,
(Cora P. Perkins),
Notary Public in and for
Harris County, Texas.

(Seal)

Appellants' Amended Designation of Contents of Record on Appeal;

Appellee's Designation of Contents of Record on Appeal;

Appellants' Original Designation of Contents of Record on Appeal;

Omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at pages 1 et seq.

CAPTION.

In the United States District Court for the Southern District of Texas, Holding Sessions at Houston.

Edwin K. Atwood, Alice B. Atwood, Richard W Atwood, N.C.M., by Alice B. Atwood as his Next Friend and Conservatrix, Alice B. Atwood as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher, Plaintiffs,

vs. No. 8630 Civil Action,

Humble Oil & Refining Company, a Texas Corporation, Defendant.

Be It Remembered: That in the above entitled and numbered cause, lately pending in said Court, in which Order of Dismissal was rendered at the Regular September 1955 Term of said Court, to-wit: On the 17th day of November A. D. 1955, the Honorable Ben C. Connally, Judge of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:

IN THE

District Court of the United States

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EDWIN K. ATWOOD, ALICE B. ATWOOD, RICHARD W. ATWOOD, N. C. M., by ALICE B. ATWOOD as his Next Friend and Conservatrix, ALICE B. ATWOOD, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., THOMAS H. FISHER and RUTH P. FISHER, *Plaintiffs,* vs. HUMBLE OIL & REFINING COMPANY, a Texas corporation, *Defendant.*	No. .....

Original Petition and Complaint.

EDWIN K. ATWOOD,
ALICE B. ATWOOD,
RICHARD W. ATWOOD, by Alice B. Atwood as his Next Friend and Conservatrix,
ALICE B. ATWOOD, as Conservatrix of the Estate of Richard W. Atwood,
RUTH P. FISHER,
THOMAS H. FISHER,

By .....
Their Attorneys,
Plaintiffs.

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA KEVIEW 5-6581

IN THE

District Court of the United States

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EDWIN K. ATWOOD, ALICE B. ATWOOD, RICHARD W. ATWOOD, N. C. M., by ALICE B. ATWOOD as his Next Friend and Conservatrix, ALICE B. ATWOOD, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., THOMAS H. FISHER and RUTH P. FISHER, *Plaintiffs,* vs. HUMBLE OIL & REFINING COMPANY, a Texas corporation, *Defendant.*	No. .....

Original Petition and Complaint.

To The Honorable Judges of the District Court of Harris County, Texas:

Now come Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, N.C.M., by Alice B. Atwood as his Next Friend and Conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher, hereinafter sometimes referred to as "Plaintiffs", and bring this their Original Petition and

Complaint against Humble Oil & Refining Company, a Texas corporation, hereinafter sometimes referred to as "Defendant", and allege that Plaintiffs, Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, Thomas H. Fisher and Ruth P. Fisher, are and have been for more than twenty-five years residents and citizens of the State of Illinois; that Plaintiff, Richard W. Atwood, is and has been for many years *non compos mentis*, having been so adjudged by the Probate Court of Cook County, Illinois, more than twenty years ago; that Plaintiff, Alice B. Atwood, is and has been for more than twenty years the lawfully appointed and acting conservatrix or guardian of the person and estate of Plaintiff, Richard W. Atwood, by appointment and order of said Probate Court of Cook County, Illinois; that the Probate Court of Cook County, Illinois, was and is a court of competent jurisdiction to make said adjudication of incompetency and to appoint said conservatrix or guardian; that Plaintiff, Alice B. Atwood, is the sister and next friend of Plaintiff, Richard W. Atwood; that no adversity of interest, insofar as the issues raised, matters pleaded, and relief prayed hereinafter are concerned, exists between Plaintiff, Alice B. Atwood, and Plaintiff, Richard W. Atwood; that Defendant, Humble Oil & Refining Company, is a Texas corporation; that there is therefore diversity of citizenship between all of the Plaintiffs, on the one hand, and Defendant, on the other hand; that this action is of a civil nature and involves more than the sum of $3,000, exclusive of interest and costs; and that all of the minerals and mineral interests and the income, profits, proceeds and avails thereof which are hereinafter referred to in this Complaint exist and are now situated within the Counties of Willacy, Kenedy, Jim Hogg and Harris, State of Texas, of which properties Plaintiffs are the owners of an undivided interest

of a present value in excess of One Million Dollars. This action relates only to the minerals hereinafter described and the income, profits, proceeds and avails derived and to be derived by Defendant therefrom to which Plaintiffs are entitled as hereinafter alleged, and does not relate to the lands, or so-called "surface" of the lands, in which said minerals are located or from which said minerals have been or shall be extracted, produced and saved.

An actual and justiciable controversy between Plaintiffs, Edwin K. Atwood and Alice B. Atwood, on the one hand, and Defendant, on the other hand, over the initial validity of that certain mineral lease dated September 26, 1933 between the Executors and Trustees of the Estate of Henrietta M. King (and others) and Defendant has been duly submitted to the District Court for the One Hundred Third Judicial District of Texas in Willacy County, Texas, in the cause or proceeding in said Court entitled "*Edwin K. Atwood and Alice B. Atwood* v. *Humble Oil & Refining Company, a Texas corporation, et al.*" No. 1539, which said proceeding is still pending in said Court and in which proceeding all issues as to the initial validity of said so-called mineral lease are subject to final determination as between said parties. No issue as to the initial validity of said so-called mineral lease is raised or presented to this Court in this proceeding.

And for their causes of action Plaintiffs plead and aver as follows:

COUNT ONE.

(1) On September 26, 1953 (upon which date all rights of Humble Oil & Refining Company, Defendant, under that certain mineral lease dated September 26, 1933 between the Executors and Trustees of the Estate of Henrietta M. King, and others, and Defendant had terminated and ex-

pired), Plaintiffs, Edwin K. Atwood, Alice B. Atwood, Thomas H. Fisher and Ruth P. Fisher, were lawfully in possession of, and were seized with the legal and equitable title to, and owning and holding in fee simple, all of the minerals and mineral rights and interests (except an undivided 3/32nds thereof) in that certain tract, piece or parcel of land situated in Willacy and Kenedy Counties, Texas, more specifically described as follows:

> The southerly two-thirds as partitioned to Edwin K. Atwood and Alice B. Atwood, and an undivided two-thirds of the northerly one-third as partitioned to Richard W. Atwood and others, of that certain tract of land in the San Juan de Carricitos Grant partitioned to Richard W. Atwood, Edwin K. Atwood and Alice B. Atwood (and Elizabeth A. Baldwin) in the partition deed to the said Atwoods executed and delivered by the Executors and Trustees of the Estate of Henrietta M. King, Deceased, dated March 30, 1935, consisting of the lands in the King Estate portion of said Carricitos Grant lying south of the partition line described in said partition deed partitioning off to the said Atwoods the southern part of the King Estate portion of said Carricitos Grant, the same according to the partition survey thereof consisting of 122,546.2 acres, more or less (said acreage being described in said partition deed as being approximately 112,421.36 acres), all within the Counties of Willacy and Kenedy in the State of Texas.

and in those two certain tracts of land adjacent to the foreforegoing tract, known as the S. H. Bell Property and the S. H. Bell "B" Property, respectively, in Willacy County, Texas, and in that certain tract, piece or parcel of land situated in Jim Hogg County, Texas, more specifically described as follows:

> The southerly two-thirds of that certain tract of 10,809.9 acres situated in Jim Hogg County, Texas partitioned to Edwin K. Atwood and Alice B. Atwood in the partition deed to the said Atwoods executed

and delivered by the Executors and Trustees of the Estate of Henrietta M. King, Deceased, dated March 30, 1935 described as follows:

Said tract of land forms a part of what is now the Santa Fe Pasture on the said Ranch. The said tract of land is situated about 38 miles south and 30 miles west of the County Seat of Jim Hogg County, Texas, and contains parts of Surveys 41 and 42, part of the Cuevitas Grant, and part of the San Antonio Viejo Grant, and all of the Surveys No. 36, 35, 103, 104, 10, 9, and 119. Said 10,809.9 acre tract is bounded as follows:

Beginning at the southwest corner of Survey No. 104, being the southwest corner of an outside fence of the said Ranch on the east side of the county road which runs along the extreme eastern line of the main body of said Jim Hogg County tract;

Thence south 69° 0′ east along the fence line at 1900 varas past the southeast corner of Survey No. 104 and southwest corner of Survey No. 103, also a fence corner, and continuing with the south line of Survey No. 103, at 2,624.7 varas to the southeast corner of Survey No. 103;

Thence north 09° 48′ east, 550 varas to the northwest corner of Survey No. 931;

Thence south 80° 12′ east, 950 varas to the northeast corner of Survey No. 931;

Thence south 09° 48′ west, 250 varas to the southeast corner of Survey No. 931;

Thence south 80° 12′ east, 611 varas to the northeast corner of Survey No. 166;

Thence south 09° 48′ west, 93 varas to the northeast corner of Survey No. 10, of 160 acres of land;

Thence north 80° 12′ west, 950.4 varas to the northwest corner of Survey No. 10;

Thence south 09° 20′ west along fence line and along the outside ranch fence and the west lines of Surveys No. 10, 9, and 119, at 3,942 varas to the southwest corner of Survey No. 119, and the northwest corner of Survey No. 120;

Thence south 81° 0′ east along the south line of Survey 119, at 1330 varas to the southeast corner of Survey No. 119; on the west line of the San Antonio Viejo Grant;

Thence south 09° 45′ west along grant line, 293 varas to the northeast corner of a fence being the southwest corner of the San Antonio Viejo Grant and the northwest corner of the Cuevitas Grant;

Thence south 22° 15′ west along the west line of Cuevitas Grant line, a fence line, at 1450 varas to the southwest corner of the Santa Fe Pasture, for southwest corner hereof;

Thence south 67° 55′ east along fence line, at 3726 varas to curve in fence;

Thence south 68° 15′ east, 828 varas to the southeast corner of this tract, being the southeast corner of this pasture;

Thence north 13° 25′ east, 302 varas to the north corner of Reforma Trap and fence corner, for corner hereof.

Thence north 37° 35′ east along fence line, at 3392 varas, corner;

Thence north 21° 45′ west along fence line, 2987 varas to corner;

Thence north 60° 0′ west, 1198 varas to hewed mesquite post for corner hereof;

Thence north 10° 48′ east, 3965 varas to the northeast corner of this pasture for northeast corner hereof;

Thence north 80° 09′ west along old fence line, 3073 varas to a stone and fence corner on west line of the San Antonio Viejo Grant;

Thence north 74° 52′ west across the south part of Sections No. 41 and 42 at 3,640.3 varas to a hewed mesquite stake marked N. W. XXXVI being the northwest corner of Survey No. 36, 5 varas south of fence and 175 varas south 67° 57″ east of northwest corner of pasture;

Thence south 21° 0′ west along the west line of Survey No. 36, 1900 varas to its southwest corner, a fence corner;

Thence north 69° 0′ west, 228 varas to the northwest corner of fence and northwest corner of Survey No. 104 as enclosed in this pasture, on the east side of county highway to Colorado Ranch;

Thence south 21° 0′ west along fence line and west line of Survey No. 104 and east side of county highway at 1900 varas to the place of beginning, containing ten thousand eight hundred nine and 9/10 (10,809.9) acres, as surveyed by E. J. Foster, County Surveyor of Webb County, Texas, on March 14, 1935.

and Plaintiffs, Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, Thomas H. Fisher and Ruth P. Fisher, were lawfully in possession of, and were seized with the legal and equitable title to, and owning and holding in fee simple, all of the minerals and mineral rights and interests (except an undivided 3/32nds thereof) in that certain tract, piece or parcel of land situated in Jim Hogg County, Texas, more specifically described as follows:

An undivided 7/9ths of the northerly one-third of that certain tract of 10,809.9 acres situated in Jim Hogg County, Texas, partitioned to Edwin K. Atwood, Alice B. Atwood and Richard W. Atwood in the partition deed to the said Atwoods executed and delivered by the Executors and Trustees of the Estate of Henrietta M. King, Deceased, dated March 30, 1935 described above.

Any further or more accurate description of said lands and minerals is better known to Defendant than to Plaintiffs and Plaintiffs are entitled to disclosure and discovery thereof from Defendant.

(2) Defendant on the 26th day of September, 1953 entered upon and dispossessed Plaintiffs of their said minerals and now withholds from them the possession thereof, to their damage in the sum of not less than $1,500,000.

Wherefore, Plaintiffs pray judgment for title to and possession of all and singular the minerals above described,

and for disclosure and discovery of any more accurate description of said lands and minerals known to Defendant, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TWO.

Plaintiffs incorporate herein and make a part of *Count Two* hereof each and all of the allegations of Paragraphs (1) and (2) of *Count One* hereof.

(3) Defendant has had and retains possession of Plaintiffs' said minerals and mineral rights and interests from September 26, 1953 to the date of the filing of this action, and Defendant intends to and will retain possession thereof during the continuance of this litigation, unless ousted therefrom by the judgment and order of this Court.

(4) Plaintiffs have been and will be thereby deprived by Defendant of the reasonable rental value of Plaintiffs' said minerals and mineral rights and interests, to their damage in the sum of not less than $1,500,000.

Wherefore, Plaintiffs pray judgment for the reasonable rental value of Plaintiffs' said minerals and mineral rights and interests between September 26, 1953 and the date of the entry of final judgment herein in the sum of not less than $1,500,000, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT THREE.

Plaintiffs incorporate herein and make a part of *Count Three* hereof each and all of the allegations of Paragraphs (1) and (2) of *Count One* and Paragraph (3) of *Count Two* hereof.

(5) Plaintiffs have suffered special damages by reason of their being ousted from possession of Plaintiffs' said

minerals and mineral rights and interests by Defendant as aforesaid, in that Plaintiffs have had responsible parties ready, able and willing to lease and purchase Plaintiffs' said minerals and mineral rights and interests, but Plaintiffs have been unable to lease or sell Plaintiffs' said minerals and mineral rights and interests because of Plaintiffs' being ousted from possession thereof as aforesaid.

(6) Plaintiffs have suffered special damages by reason of the foregoing, in the sum of not less than $1,500,000.

Wherefore, Plaintiffs pray judgment against Defendant for their special damages in the sum of not less than $1,500,000, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT FOUR.

Plaintiffs incorporate herein and make a part of *Count Four* hereof each and all of the allegations of Paragraph (1) of *Count One* hereof.

(7) On or about September 26, 1933, Defendant, as lessee, entered into a so-called mineral lease with the Executors and Trustees of the Estate of Henrietta M. King, Deceased, and others, as lessors, a copy of which so-called mineral lease is attached hereto and made a part hereof, marked "Exhibit A". Defendant has and claims no interest in the minerals and mineral rights and interests in any of the minerals described in Paragraph (1) of *Count One* hereof except under and by virtue of said so-called mineral lease.

(8) On or about March 30, 1935, said Executors and Trustees of the Estate of Henrietta M. King, Deceased, conveyed to Plaintiffs, Edwin K. Atwood and Alice B. Atwood, all of the lessors' rights, titles and interests under

said so-called mineral lease in said minerals lying in Willacy and Kenedy Counties, Texas (except an undivided 3/32nds thereof), and all of the lessors' rights, titles and interests under said so-called mineral lease in the first of said two tracts lying in Jim Hogg County, Texas (except an undivided 3/32nds thereof), and also conveyed to Plaintiffs, Edwin K. Atwood and Alice B. Atwood, and to Richard W. Atwood, all of the lessors' rights, titles and interests under said so-called mineral lease in the second of said two tracts lying in Jim Hogg County, Texas (except an undivided 3/32nds hereof); and thereafter Plaintiffs, Edwin K. Atwood and Alice B. Atwood, conveyed to Plaintiffs, Thomas H. Fisher and Ruth P. Fisher, an undivided 45/100ths of the rights, titles and interests of Plaintiffs, Edwin K. Atwood and Alice B. Atwood, therein, and Plaintiff, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., conveyed to Plaintiffs, Thomas H. Fisher and Ruth P. Fisher, an undivided 35/100ths of the rights, titles and interests of Richard W. Atwood therein.

(9) An actual and justiciable controversy has existed and now exists between Plaintiffs, on the one hand, and Defendant, on the other hand, over the true construction, interpretation and meaning of those parts of Paragraphs 2 and 8 of said so-called mineral lease, which provide as follows:

> "2 . . . this lease shall be for a term of twenty years from this date; and at the expiration of said twenty years if oil, gas or other mineral is then being produced from said land, the lessee shall promptly designate and define in writing the area or areas on which oil, gas and/or other minerals are then being produced, it being contemplated that lessee shall have the right to retain under the terms of this lease the area or areas included within the geologic structures or formations proven to be productive at the end of said twenty-year

period; and in determining what area or areas are proven to be productive, only the area or areas shall be designated from which there are being produced oil, gas and/or other minerals at the end of such twenty-year period, and in determining the extent of such productive area or areas consideration shall be given to geologic information obtained from all wells including dry holes, if any, in the vicinity and from the surface geology and from investigation with geophysical instruments or methods and/or from other methods which then may be in use in the industry; and as to said area or areas the lease shall continue as long thereafter as oil, gas or other mineral is produced therefrom.

• • •

8. . . . In the event of the termination of this lease for any cause lessee shall have the right to retain, under the terms of the lease, each well then being worked on and/or drilled and/or producing oil or gas and twenty acres surrounding same, to be selected by lessee in as nearly a square form as possible."

(10) A further actual and justiciable controversy has existed and now exists between Plaintiffs, on the one hand, and Defendant, on the other hand, over the issues or questions relative to said Paragraphs 2 and 8, as follows:

(a) Whether Defendant was entitled to retain under said so-called mineral lease upon the termination thereof by the expiration of the twenty-year period referred to on September 26, 1953 only an area of 20 acres around each producing oil or gas well then located on said minerals so owned by Plaintiffs, or whether Defendant was entitled to retain under said so-called mineral lease upon the termination thereof as aforesaid approximately 50,000 acres or more of the minerals so owned by Plaintiffs as aforesaid.

(b) What part of the area covered by and described in said so-called mineral lease owned by Plaintiffs, if any, Defendant was entitled to retain thereunder.

(11) Plaintiffs assert that under the true construction, interpretation and meaning of the foregoing provisions of said so-called mineral lease, Defendant was entitled to retain thereunder upon the termination of said so-called mineral lease by the expiration of the twenty-year period referred to, which said twenty-year period expired on September 26, 1953, only an area of 20 acres around each producing oil or gas well then located on said minerals so owned by Plaintiffs; that Defendant claims that there were on September 26, 1953 approximately 100 producing oil and gas wells thereon; and that in the event there were approximately 100 producing oil and gas wells thereon as aforesaid, the total area which Defendant was entitled to retain under said so-called mineral lease was and is approximately 2,000 acres as aforesaid.

(12) Defendant asserts that the total area which it is entitled to retain under said so-called mineral lease comprises approximately 50,000 acres or more, and is not limited to said area of approximately 2,000 acres as aforesaid.

(13) Plaintiffs are entitled to a declaratory judgment or decree of this Court adjudging and decreeing the true construction, interpretation and meaning of those portions of said so-called mineral lease hereinabove referred to, and the area which Defendant had the right to retain thereunder on and subsequent to September 26, 1953, without prejudice to the issue as to the initial validity of said so-called mineral lease as determined in said Cause No. 1539.

Wherefore, Plaintiffs pray the Court to enter its declaratory judgment or decree herein adjudging, decreeing and determining the true construction, interpretation and meaning of those parts of said so-called mineral lease hereinabove quoted, and the area which Defendant had the right to retain thereunder on and subsequent to September 26,

1953, if any, without prejudice to the issue as to the initial validity of said so-called mineral lease as determined in said Cause No. 1539, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT FIVE.

Plaintiffs incorporate herein and make a part of *Count Five* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) to (13), inclusive, of *Count Four* hereof.

(14) Plaintiffs have no knowledge of the area or areas of the minerals owned by Plaintiffs from which oil, gas or other minerals were being produced by Defendant under said so-called mineral lease at the end of said twenty-year period on September 26, 1953, or of the geologic structures or formations then proven to be productive by reason of geologic information obtained from all wells, including dry holes, if any, in the vicinity, or from the surface geology, or from investigation with geophysical instruments or methods, or from other methods which then were in use in the industry, or of what wells were then producing oil or gas thereon, if any, within the true construction, interpretation and meaning of those parts of said so-called mineral lease hereinabove referred to.

(15) Defendant has possession of the foregoing information referred to in the preceding Paragraph (14) hereof, and, so far as known to Plaintiffs, Defendant is the sole person, firm or corporation having such information.

(16) Plaintiffs have demanded that Defendant furnish Plaintiffs with all of the information referred to in the preceding Paragraphs (14) and (15) hereof, but Defendant has failed and refused to furnish the same to Plaintiffs.

(17) Plaintiffs are entitled to disclosure and discovery of all of the information referred to in the preceding Paragraphs (14), (15) and (16) hereof.

Wherefore, Plaintiffs pray that Defendant be required by the judgment or decree of this Court fully to disclose and discover to Plaintiffs all of the information referred to in Paragraphs (14) to (17), inclusive, hereof, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT SIX.

Plaintiffs incorporate herein and make a part of *Count Six* hereof each and all of the allegations of *Counts One* to *Five*, inclusive, hereof.

(18) In the event that Defendant has extracted, since September 26, 1953, and prior to the filing of this action, any minerals from the minerals owned by Plaintiffs subject to said oil, gas and mineral lease dated September 26, 1933, a copy of which is attached hereto and made a part hereof, marked "Exhibit A", or in the event that Defendant shall extract any minerals therefrom after the filing of this action and prior to the date of the trial of this cause, all or any of which minerals were or shall be extracted from minerals which Defendant was not lawfully entitled to retain under said so-called mineral lease, then and in any such event Plaintiffs are entitled to an accounting from Defendant of all such minerals so extracted and to be extracted by Defendant, together with an accounting of all income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(19) Said minerals so extracted and to be extracted have an especial value to Plaintiffs, and Plaintiffs are entitled to a judgment or decree of this Court for the seizure and delivery to Plaintiffs of all said minerals so extracted

and to be extracted as alleged in the preceding Paragraph (18) hereof, together with all income, profits, proceeds and avails derived and to be derived by Defendant therefrom, and passing the title thereto to Plaintiffs without any act to be done by Defendant; and if said minerals be no longer *in esse*, Plaintiffs are entitled to the money value thereof, together with the money value of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

Wherefore, Plaintiffs pray the Court to enter its judgment or decree requiring Defendant to account for all of the minerals extracted and to be extracted as aforesaid and the income, profits, proceeds and avails therefrom to which Plaintiffs are entitled as aforesaid, and seizing said minerals and delivering, or requiring Defendant to deliver, to Plaintiffs all of said minerals so extracted and to be extracted, and passing the title thereto to Plaintiffs without any act to be done by Defendant, and if said minerals be no longer *in esse*, Plaintiffs pray for a money judgment or decree for the money value thereof, together with the income, profits, proceeds and avails derived and to be derived by Defendant therefrom, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT SEVEN.

Plaintiffs incorporate herein and make a part of *Count Seven* each and all of the allegations of *Counts One* to *Six*, inclusive, hereof.

(20) Plaintiffs have no knowledge of the minerals extracted and to be extracted by Defendant as alleged in Paragraphs (18) and (19) of *Count Six* hereof, or of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(21) Defendant has possession of the foregoing information referred to in the preceding Paragraph (20) hereof, and, so far as known to Plaintiffs, Defendant is the sole person, firm or corporation having such information.

(22) Plaintiffs have demanded and do by the filing of this action demand that Defendant furnish Plaintiffs with all of the information referred to in the preceding Paragraphs (20) and (21) hereof, but Defendant has failed and refused to furnish the same to Plaintiffs.

(23) Plaintiffs are entitled to disclosure and discovery of all of the information referred to in the preceding Paragraphs (20), (21) and (22) hereof.

Wherefore, Plaintiffs pray that the Defendant be required by the judgment or decree of this Court to disclose and discover to Plaintiffs all of the information referred to in Paragraphs (18) to (22), inclusive, hereof, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT EIGHT.

In the event that Plaintiffs do not obtain in said Cause No. 1539 the relief hereinafter sought, Plaintiffs incorporate herein and make a part of *Count Eight* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* hereof.

(24) Plaintiffs are the sole owners of 14,034 acres of minerals in the San Juan de Carricitos Grant, Willacy County, Texas, and an undivided 7/9ths of certain minerals known as the Gonzales and Ramirez Surveys in Jim Hogg County, Texas, as well as the two tracts of minerals known as the S. H. Bell Property and the S. H. Bell "B" Property aforesaid (except an undivided 3/32nds thereof), all

of which minerals are covered by and described in said so-called mineral lease.

(25) During the period between June, 1944 and September, 1953, both inclusive, Defendant extracted from said 14,034 acres of minerals not less than 10,308,700.67 barrels of oil of a value (after taxes) of not less than the sum of $21,063,022.04, as shown on the statement attached hereto and made a part hereof, marked "Exhibit B".

(26) During the period between June, 1945 and August, 1953, both inclusive, Defendant extracted from said 14,034 acres of minerals not less than 3,639,663 millions of cubic feet (M.C.F.) of gas of a value (after taxes) of not less than the sum of $9,722.68, as shown on the statement attached hereto and made a part hereof, marked "Exhibit C".

(27) During the period between June, 1939 and September, 1953, both inclusive, Defendant extracted from said minerals known as the Gonzales and Ramirez Surveys not less than 1,241,858.49 barrels of oil of a value (after taxes) of not less than the sum of $2,323,863.01, as shown on the statement attached hereto and made a part hereof, marked "Exhibit D".

(28) During the period between August, 1951 and July, 1953, both inclusive, Defendant extracted from said minerals known as the S. H. Bell Property not less than 20,174 millions of cubic feet (M.C.F.) of gas of a value (after taxes) of not less than the sum of $1,886.18, plus credits of not less than the sum of $85.47, as shown on the statement attached hereto and made a part hereof, marked "Exhibit E".

(29) During the period between August, 1951 and August, 1953, both inclusive, Defendant extracted from said minerals known as the S. H. Bell "B" Property not less

than 52,181 millions of cubic feet (M.C.F.) of gas of a value (after taxes) of not less than the sum of $4,577.84, plus credits of not less than the sum of $207.45, as shown on the statement attached hereto and made a part hereof, marked "Exhibit F".

(30) During the period between February, 1949 and September, 1953, both inclusive, Defendant extracted from said minerals known as the S. H. Bell Property not less than 21,722.07 barrels of oil of a value (after taxes) of not less than the sum of $50,834.69, as shown on the statement attached hereto and made a part hereof, marked "Exhibit G".

(31) During the period between November, 1950 and September, 1953, both inclusive, Defendant extracted from said minerals known as the S. H. Bell "B" Property not less than 68,316.93 barrels of oil of a value (after taxes) of not less than the sum of $158,510.63, as shown on the statement attached hereto and made a part hereof, marked "Exhibit H".

(32) Defendant is obligated to Plaintiffs for 1/8th of 29/32nds (hereinafter called Plaintiffs' "one-eighth royalty share" under said so-called mineral lease) of all of the oil (other than the 719,618.44 barrels of oil referred to in the following Paragraph (33) hereof) and of all of the gas extracted by Defendant prior to September 26, 1953 as hereinabove set forth in Paragraph (25) to (31), inclusive, hereof, and of all additional oil and gas extracted prior to September 26, 1953, and in the alternative event that said so-called mineral lease did not terminate on September 26, 1953, of all of the oil and gas thereafter extracted and to be extracted to the date of the trial of this cause by Defendant from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease, ex-

cept that part of said minerals not owned by Plaintiffs as set forth in the following Paragraph (33) hereof, together with all of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom. Defendant has delivered and paid to Plaintiffs none of said oil and gas royalties. Said oil and gas to which Plaintiffs are entitled has an especial value to Plaintiffs.

(33) On December 29, 1949, Defendant paid Plaintiffs, Edwin K. Atwood and Alice B. Atwood (and their transferees, Thomas Hart Fisher and Ruth P. Fisher), in full for 272,794.57 barrels of oil extracted by Defendant between June, 1944 and June, 1947, both inclusive, from said 14,034 acres of minerals; and on December 6, 1950, Defendant paid Plaintiffs, Edwin K. Atwood and Alice B. Atwood (and their transferees, Thomas Hart Fisher and Ruth P. Fisher), in full for 446. 23.87 barrels of oil extracted by Defendant between July, 1947 and October, 1950, both inclusive, from said 14,034 acres of minerals. Said payments were made pursuant to two written instruments dated respectively on December 29, 1949 and December 6, 1950, copies of which instruments will be presented at the trial of this cause. As hereinabove stated, Plaintiffs do not own an undivided 3/32nds of the oil and gas extracted by Defendant as hereinabove set forth in the preceding Paragraphs (25) to (31), inclusive, hereof from the minerals described therein; and Plaintiffs do not own a further undivided 2/9ths of 29/32nds (or 58/288ths) of the oil extracted and to be extracted by Defendant as hereinabove set forth in the preceding Paragraph (27) hereof, from the minerals described therein.

(34) Plaintiffs are entitled to an accounting from Defendant of the oil, gas and other minerals extracted and to be extracted by Defendant from the minerals described in Paragraph (1) of *Count One* hereof prior to the date of

the trial of this cause; and Plaintiffs are further entitled to an accounting from Defendant of the oil and gas and other royalties, and of all other moneys and damages to which Plaintiffs are entitled under said so-called mineral lease to the date of the trial of this cause; and Plaintiffs are entitled to a judgment or decree of this Court adjudging and decreeing that Plaintiffs are entitled to and the owners of their one-eighth royalty share of the oil actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and seizing and delivering, or requiring Defendant to deliver, their one-eighth royalty share of said oil to Plaintiffs, and passing the title thereto to Plaintiffs without any act to be done by Defendant, and to a money judgment or decree for the amount of Plaintiffs' royalty for gas and to an appropriate judgment for Plaintiffs' royalty share of other minerals extracted and to be extracted by Defendant from the minerals so owned by Plaintiff as aforesaid under said so-called mineral lease as aforesaid, and to a money judgment or decree for the other moneys and damages to which Plaintiffs are entitled as aforesaid; and in the event that Defendant has derived or shall derive any income, profits, proceeds or avails from Plaintiffs' one-eighth royalty share of said oil and gas and from Plaintiffs' royalty share of other minerals so owned by Plaintiffs, Plaintiffs are entitled to a further accounting and to a further money judgment or decree for the amount of such income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

Wherefore, Plaintiffs pray the Court to order or decree that an accounting be taken and that Defendant account to Plaintiffs for the oil, gas and other minerals extracted and to be extracted by Defendant from the minerals in

Paragraph (1) of *Count One* hereof prior to the date of the trial of this cause, and that said accounting include all oil and gas and other royalties and all of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom, and all other moneys and damages to which Plaintiffs are entitled under said so-called mineral lease to the date of the trial of this cause; and that this Court enter a judgment or decree adjudging and decreeing that Plaintiffs are entitled to and the owners of their one-eighth royalty share of the oil actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and that Plaintiffs' said one-eighth royalty share of said oil be delivered to Plaintiffs by Defendant, or that the Court order the seizure and delivery thereof to Plaintiffs, and pass title thereto to Plaintiffs without any act to be done by Defendant; and that this Court enter a money judgment or decree adjudging and decreeing the amount of Plaintiffs' one-eighth royalty share of the gas and an appropriate judgment or decree for Plaintiffs' royalty share of other minerals extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid; and that this Court enter a money judgment or decree for the other moneys and damages to which Plaintiffs are entitled as aforesaid; and in the event that Defendant has derived or shall derive any income, profits, proceeds or avails from Plaintiffs' said royalty share of said oil, gas and other minerals so owned by Plaintiffs, that this Court enter a money judgment or decree for the amount of such income, profits, proceeds and avails derived and to be derived by Defendant therefrom, and for their costs; and that Plaintiff may have all other general and special relief.

COUNT NINE.

In the event that Plaintiffs do not obtain in said Cause No. 1539 the relief hereinafter sought, Plaintiffs incorporate herein and make a part of *Count Nine* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (25) to (33), inclusive, of *Count Eight* hereof.

(35) Defendant is an express or resulting trustee and fiduciary for Plaintiffs of Plaintiffs' one-eighth royalty share of the oil and gas and of Plaintiffs' royalty share of other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four* hereof, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from Plaintiffs' one-eighth royalty share of said oil and gas and from Plaintiffs' royalty share of other minerals; and in the alternative event that Defendant is not an express or resulting trustee for Plaintiffs thereof, then Defendant is a constructive trustee for Plaintiffs thereof.

(36) Defendant has never repudiated said trust or notified Plaintiffs of any such repudiation, but on the contrary Defendant, through its agent and attorney, Felix A. Raymer, has admitted and conceded that Defendant was and continued to be an express or resulting trustee and fiduciary for Plaintiffs, or a constructive trustee for Plaintiffs, of Plaintiffs' one-eighth royalty share of the oil and gas and of Plaintiffs' royalty share of other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four*

hereof, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from Plaintiffs' one-eighth royalty share of said oil and gas and from Plaintiffs' royalty share of other minerals; and Defendant, through its said agent and attorney, sent a letter on July 2, 1953 to Plaintiffs confirming such admission and concession, a copy of which letter is attached hereto and made a part hereof, marked "Exhibit I."

(37) Plaintiffs are entitled to a judgment or decree of this Court adjudging and decreeing that Defendant is and continues to be an express or resulting trustee and fiduciary for Plaintiffs as beneficiaries thereof of Plaintiffs' one-eighth royalty share of the oil and gas and Plaintiffs' royalty share of other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease as alleged in the preceding Paragraph (35) hereof, or, in the alternative event that Defendant is not an express or resulting trustee for Plaintiffs thereof, then that Defendant is a constructive trustee for Plaintiffs thereof, and to a judgment or decree of this Court ordering, directing and requiring Defendant forthwith to deliver to Plaintiffs their said one-eighth royalty share of said oil and gas and Plaintiffs' royalty share of other minerals, together with all of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

Wherefore, Plaintiffs pray that the Court adjudge and decree that Defendant is and continues to be an express or resulting trustee and fiduciary for Plaintiffs of Plaintiffs' one-eighth royalty share of said oil and gas and Plaintiffs' royalty share of other minerals, together with all of the income, profits, proceeds and avails derived and

to be derived by Defendant therefrom as aforesaid, or, in the alternative event that Defendant is not an express or resulting trustee for Plaintiffs thereof, then that Defendant is a constructive trustee for Plaintiffs thereof; and that Defendant be ordered, directed and required by the judgment or decree of this Court forthwith to deliver to Plaintiffs their one-eighth royalty share of said oil and gas and Plaintiffs' royalty share of other minerals extracted and to be extracted by Defendant as aforesaid under said so-called mineral lease, together with all of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TEN.

In the event that Plaintiffs do not obtain in said Cause No. 1539 the relief hereinafter sought, Plaintiffs incorporate herein and make a part of *Count Ten* hereof each and all if the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (25) to (33), inclusive, of *Count Eight* hereof.

(38) Plaintiffs and Defendants are co-owners of all of the oil and gas and other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four* hereof, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from all of said oil and gas and other minerals.

(39) Defendant has never repudiated said co-ownership or notified Plaintiffs of any such repudiation, but on the contrary Defendant, through its agent and attorney, Felix

A. Raymer, has admitted and conceded that Plaintiffs and Defendant were and continue to be co-owners of all of the oil and gas and other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four* hereof, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant therefrom; and Defendant, through its said agent and attorney, sent a letter on July 2, 1953 to Plaintiffs conforming such admission and concession, a copy of which letter is attached hereto and made a part hereof, marked "Exhibit I".

(40) Plaintiffs are entitled to a judgment or decree of this Court adjudging and decreeing that Plaintiffs and Defendant are co-owners of all of the oil and gas and other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease as alleged in the preceding Paragraph (27) hereof and to a judgment or decree of this Court ordering, directing and requiring Defendant forthwith to deliver to Plaintiffs their one-eighth royalty share of said oil and gas and Plaintiffs' royalty share of other minerals of which Plaintiffs and Defendant are co-owners as aforesaid, together with all of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

Wherefore, Plaintiffs pray that this Court enter a judgment or decree adjudging and decreeing that Plaintiffs and Defendant are co-owners of all of the oil and gas and other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four*

hereof, and ordering, directing and requiring Defendant forthwith to deliver to Plaintiffs their one-eighth royalty share of said oil and gas and Plaintiffs' royalty share of other minerals of which Plaintiffs and Defendant are co-owners as aforesaid, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant therefrom, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT ELEVEN.

In the event that Plaintiffs do not obtain in said Cause No. 1539 the relief hereinafter sought, Plaintiffs incorporate herein and make a part of *Count Eleven* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (25) to (33), inclusive, of *Count Eight* and Paragraphs (38) to (40), inclusive, of *Count Ten* hereof.

(41) Plaintiffs are entitled to a judgment or decree of this Court partitioning between Plaintiffs and Defendant as co-owners thereof all of the oil and gas and other minerals actually extracted and to be extracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four* hereof, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from all of said oil and gas and other minerals.

Wherefore, Plaintiffs pray that this Court enter a judgment or decree partitioning between Plaintiffs and Defendant as co-owners, in the respective shares to which Plaintiffs and Defendant are respectively entitled to and the owners of their respective shares of all of the oil and gas and other minerals actually extracted and to be ex-

tracted prior to the trial of this cause from the minerals described in Paragraph (1) of *Count One* hereof under said so-called mineral lease referred to in Paragraph (7) of *Count Four* hereof, together with all of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from all of said oil and gas and other minerals; and that this Court enter a judgment ordering, directing and requiring Defendant forthwith to deliver to Plaintiffs their royalty share of all of said oil and gas and other minerals, together with all of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom, to which Plaintiffs are entitled as co-owners as aforesaid and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TWELVE.

In the event that Plaintiffs do not obtain in said Cause No. 1539 the relief hereinafter sought, Plaintiffs incorporate herein and make a part of *Count Twelve* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (25) to (33), inclusive, of *Count Eight* and Paragraphs (35) to (37), inclusive, of *Count Nine* and Paragraphs (38) to (40), inclusive, of *Count Ten* and Paragraph (41) of *Count Eleven* hereof.

(42) An actual and justiciable controversy has existed and now exists between Plaintiffs, on the one hand, and Defendant, on the other hand, over the true construction, interpretation and meaning of Paragraph 3 of said so-called mineral lease, which provides as follows:

> "3. The royalties to be paid by lessee are: (a) On oil, one-eighth of that produced and saved from said land, the same to be delivered at the wells or to the credit of the lessors in the pipeline to which the wells may be connected; (b) On gas, including casing-head

gas and other vaporous or gaseous substances produced from said land or sold or used off the premises or in the manufacture of gasoline or other product therefrom, or otherwise sold or used, except in operation of the lease, the market value at the well of one-eighth of the gas, so sold or used, provided that in case lessee shall sell gas at the wells, the royalty shall be one-eighth of the amount realized from such sale; (c) On sulphur mined and marketed from the premises, a royalty of One ($1.00) Dollar per long ton; and (d) On all other minerals mined and marketed, a reasonable royalty."

(43) A further actual and justiciable controversy has existed and now exists between Plaintiffs, on the one hand, and Defendant, on the other hand, over the issues or questions relative to said Paragraph 3 as follows:

(a) Whether Plaintiffs are entitled to and the owners of their royalty share of the oil and gas and other minerals actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid;

(b) Whether Plaintiffs are entitled to delivery from Defendant of their royalty share of the oil and gas and other minerals actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid.

(c) Whether Plaintiffs are entitled to and the owners of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from Plaintiffs' royalty share of the oil and gas and other minerals actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid.

(d) Whether Defendant is and continues to be an express or resulting trustee and fiduciary for Plaintiffs, or if not then a constructive trustee for Plaintiffs, of Plaintiffs' royalty share of the oil and gas and other minerals actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(e) Whether Plaintiffs and Defendant are co-owners of all of the minerals (except an undivided 3/32nds thereof) actually extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid in the proportions of an undivided one-eighth royalty share of the oil and gas and a royalty of other minerals owned by Plaintiffs and the balance thereof owned by Defendant, and of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(44) Plaintiffs assert that under the true construction, interpretation and meaning of the foregoing provision of said so-called mineral lease, Plaintiffs are entitled to and the owners of their royalty share of the oil and gas and other minerals actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid; that Plaintiffs are entitled to seizure from Defendant and delivery to Plaintiffs of their royalty share of said oil and gas and other minerals; that Plaintiffs are entitled to and the owners of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from Plaintiffs' royalty share of said oil and gas and other minerals; that Defendant is an express or resulting trustee and fidu-

ciary, or; if not, then a constructive trustee, for Plaintiffs of Plaintiffs' royalty share of the oil and gas and other minerals actually extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom; and that Plaintiffs and Defendant are co-owners in the proportions of an undivided one-eighth owned by Plaintiffs and an undivided seven-eighths owned by Defendant of all of the oil and other minerals (except an undivided 3/32nds thereof) actually extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(45) Defendant asserts that under the true construction, interpretation and meaning of the foregoing provision of said so-called mineral lease, Plaintiffs are not entitled to and the owners of a royalty share of the oil and gas and other minerals actually extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid; that Plaintiffs are not entitled to seizure from Defendant and delivery to Plaintiffs of their royalty share of said oil and gas, and other minerals; that Plaintiffs are not entitled to and the owners of the income, profits, proceeds and avails, if any, derived and to be derived by Defendant from Plaintiffs' royalty share of said oil and gas and other minerals; that Defendant is neither an express nor resulting trustee and fiduciary, nor a constructive trustee, for Plaintiffs of Plaintiffs' royalty share of the oil and gas and other minerals actually extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and of the income,

profits, proceeds and avails derived and to be derived by Defendant therefrom; and that Plaintiffs and Defendant are not co-owners in the proportions of an undivided one-eighth owned by Plaintiffs and the balance owned by Defendant of all of the oil (except an undivided 3/32nds thereof) actually extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and of the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(46) Plaintiffs are entitled to a declaratory judgment or decree of this Court adjudging and decreeing the true construction, interpretation and meaning of that portion of said so-called mineral lease hereinabove referred to and adjudicating and determining the several issues or questions hereinabove stated, without prejudice to the issue as to the initial validity of said so-called mineral lease as determined in said Cause No. 1539.

Wherefore, Plaintiffs pray the Court to enter judgment or decree adjudging and decreeing the true construction, interpretation and meaning of that part of said so-called mineral lease hereinabove quoted, and adjudicating and determining the several issues or questions hereinabove stated, without prejudice to the issue as to the initial validity of said so-called mineral lease as determined in said Cause No. 1539, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT THIRTEEN.

In the event that Plaintiffs do not obtain in said Cause No. 1539 the relief hereinafter sought, Plaintiffs incorporate herein and make a part of *Count Thirteen* hereof each and all of the allegations of Paragraph (1) of *Count One*

and Paragraphs (7) and (8) of *Count Four* and Paragraphs (25) to (33), inclusive of *Count Eight* and Paragraphs (35 to (37), inclusive, of *Count Nine* and Paragraphs (38) to (40), inclusive, of *Count Ten* hereof.

(47) Plaintiffs (and their predecessors in interest, the Executors and Trustees of the Estate of Henrietta M. King, Deceased) have fully performed all obligations required to be performed by them under the so-called mineral lease, or in the alternative event that they have not done so, then they have offered to do so, and are now ready, able and willing and now offer to do so.

(48) The oil and gas and other minerals extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid are unique and cannot be purchased on the open market and have an especial value to Plaintiffs.

(49) Plaintiffs are entitled to specific performance of that part of Paragraph 3 of said so-called mineral lease, which provides as follows:

> "3. The royalties to be paid by lessee are:- (a) On oil, one-eighth of that produced and saved from said land, the same to be delivered at the wells or to the credit of the lessors in the pipeline to which the wells may be connected; . . ."

and of the obligation of Defendant to deliver at the wells or to the credit of Plaintiffs in the pipeline to which the wells may be connected Plaintiffs' one-eighth royalty share of all oil extracted and to be hereafter extracted, produced and saved from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and to a judgment or decree of this Court ordering, directing and requiring that Defendant forthwith deliver to Plaintiffs at the wells or to the credit of Plaintiffs in the pipeline

to which the wells may be connected Plaintiffs' one-eighth royalty share of all oil extracted and to be hereafter extracted, produced and saved from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid. And Plaintiffs offer to do equity as this Court may lawfully require.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and decreeing that Defendant specifically perform that part of Paragraph 3 of said so-called mineral lease hereinabove quoted, and that Defendant be ordered, directed and required by the judgment or decree of this Court forthwith to deliver to Plaintiffs their one-eighth royalty share of said oil extracted and to be hereafter extracted, produced and saved from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT FOURTEEN.

Plaintiffs incorporate herein and make a part of *Count Fourteen* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* hereof.

(50) On September 24, 1953, Defendant caused to be filed for record in the office of the County Clerk of Willacy County, Texas a certain written instrument entitled "Designation of Producing Area" and caused the same to be duly recorded on September 25, 1953. A copy of said written instrument (exclusive of the maps thereto attached) is attached hereto and made a part hereof, marked "Exhibit J".

(51) On October 30, 1953, Defendant caused to be filed for record in the office of the County Clerk of Willacy

County, Texas a certain written instrument entitled "Designation Instrument" and caused the same to be duly recorded on October 30, 1953. A copy of said written instrument is attached hereto and made a part hereof, marked "Exhibit K".

(52) The foregoing written instruments, copies of which are attached hereto and made a part hereof, marked "Exhibit J" and "Exhibit K", respectively, are void as to, and constitute clouds upon, Plaintiffs' title to both the minerals in place and the minerals extracted and to be extracted, and each and every part thereof, so owned by Plaintiffs as aforesaid, under said so-called mineral lease as aforesaid, except such part thereof, if any, as Defendant was entitled to retain under Paragraphs 2 and 8 of said so-called mineral lease upon the termination of the twenty-year period therein referred to.

(53) Plaintiffs are entitled to a judgment or decree of this court adjudging and decreeing said written instruments, copies of which are attached hereto and made a part hereof, marked "Exhibit J" and "Exhibit K", respectively, to be void as to, and clouds upon, Plaintiffs' title to said minerals so owned by Plaintiffs as aforesaid, under said so-called mineral lease as aforesaid, except as hereinabove set forth, and that said written instruments be removed as clouds thereon as aforesaid.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and decreeing said written instruments, copies of which are attached hereto and made a part hereof marked "Exhibit J" and "Exhibit K", respectively, to be void as to, and clouds upon, and removing the same from, Plaintiffs' title to said minerals so owned by Plaintiffs as aforesaid, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT FIFTEEN.

Plaintiffs incorporate herein and make a part of *Count Fifteen* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (50) to (53), inclusive, of *Count Fourteen* hereof.

(54) Plaintiffs are entitled to a judgment or decree of this Court quieting their title to both said minerals in place and said minerals extracted and to be extracted, and each and every part thereof, so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and decreeing that Plaintiffs' title be quieted to said minerals in place and to said minerals extracted and to be extracted as aforesaid, so owned by Plaintiffs, under said so-called mineral lease as aforesaid, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT SIXTEEN.

Plaintiffs incorporate herein and make a part of *Count Sixteen* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraph (36) of *Count Nine* hereof.

(55). Said letter, a copy of which is attached hereto and made a part hereof, marked "Exhibit I", constituted a new promise or implied promise by Defendant to Plaintiffs and an acknowledgment of the justness of Plaintiffs' claim, and of Defendant's obligation, that Defendant deliver and pay to Plaintiffs their royalty share of the minerals extracted and to be extracted by Defendant from the minerals so owned by Plaintiffs as aforesaid, under

said so-called mineral lease as aforesaid, and the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

(56) Plaintiffs are entitled to a judgment or decree of this Court requiring Defendant to deliver and pay to Plaintiffs their royalty share of the minerals extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid, under said so-called mineral lease as aforesaid, and the income, profits, proceeds and avails derived and to be derived by Defendant therefrom.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and decreeing that Defendant deliver and pay to Plaintiffs their royalty share of the minerals extracted and to be extracted from the minerals so owned by Plaintiffs as aforesaid, under said so-called mineral lease as aforesaid, and the income, profits, proceeds and avails derived and to be derived by Defendant therefrom, and for their costs; and that plaintiffs may have all other general and special relief.

COUNT SEVENTEEN.

Plaintiffs incorporate herein and make a part of *Count Seventeen* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* hereof.

(57) Paragraph 8 of said so-called mineral lease provides in part as follows:

> "After the discovery of oil and/or gas on said premises in paying quantities the lessee [Defendant] agrees reasonably to develop the producing structure, that is, lessee agrees to develop the same to the extent that a reasonably prudent operator would develop it it under the same or similar circumstances."

(58) On or about September 26, 1933, contemporaneously with the execution and delivery of said so-called mineral lease and as a part of the same transaction, Defendant as lessee entered into a so-called non-exploration contract with the Executors and Trustees of the Estate of Henrietta M. King, Deceased, and others, as lessors, a copy of which so-called non-exploration contract is attached hereto and made a part hereof, marked "Exhibit L".

(59) Said non-exploration contract provides in part as follows:

> "In the event oil and/or gas should be discovered in paying quantities on the leased premises, we [Defendant] agree to develop the productive structure with reasonable diligence as specified in the leases. We further agree subject to the orders, rules and regulations of the Railroad Commission of Texas and/or other lawful authority to produce from said leased premises currently approximately that portion of our total production in the State of Texas that we estimate the proven reserves of these leased premises are of our total proven reserves in the State of Texas from time to time."

(60) After oil, gas or other minerals were discovered and produced in paying quantities from the minerals so owned by Plaintiffs as aforesaid under said so-called mineral lease as aforesaid, Defendant failed and refused reasonably to develop the producing structure, that is, Defendant failed to develop the same to the extent that a reasonably prudent operator would develop it under the same or similar circumstances; and Defendant failed and refused to develop the productive structure with reasonable diligence as required by said so-called mineral lease; and Defendant failed and refused to produce from said leased premises currently approximately that portion of Defendant's total production in the State of Texas that the

proven reserves on said leased premises were and are of Defendant's total proven reserves in the State of Texas from time to time, all as provided in said so-called mineral lease and said so-called non-exploration contract; and thereupon all or any right of Defendant to or interest of Defendant in all or any of that portion of the producing structure which Defendant has failed to develop and from which it has failed to produce minerals as aforesaid has thereby terminated.

(61) Defendant will continue to fail and refuse reasonably to develop the leased premises and the productive structure thereon and to produce therefrom that portion of Defendant's total production in the State of Texas that the proven reserves on said leased premises are of Defendant's proven reserves in the State of Texas from time to time as aforesaid, unless ordered and required to do so by the judgment and decree of this Court.

(62) Plaintiffs are entitled to a judgment or decree of this Court terminating all or any right to or interest in said minerals by Defendant as aforesaid, or alternatively, if said relief be not granted, then to a judgment or decree of this Court ordering or requiring Defendant reasonably to develop the leased premises and to develop the productive structure thereon with reasonable diligence and to produce therefrom that portion of Defendant's production in the State of Texas that the proven reserves on said leased premises are of Defendant's proven reserves in the State of Texas from time to time.

Wherefore, Plaintiffs pray that this Court enter a judgment or decree terminating all or any right to or interest in said minerals by Defendant, or alternatively, if said relief be not granted, then that this Court entered a judgment or decree ordering and requiring Defendant reason-

ably to develop the leased premises and to develop the productive structure thereon with reasonable diligence and to produce therefrom that portion of Defendant's production in the State of Texas that the proven reserves on said leased premises are of Defendant's proven reserves in the State of Texas from time to time, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT EIGHTEEN

Plaintiffs incorporate herein and make a part of *Count Eighteen* hereof each and all of the allegations of Paragraph (1) of *Count One* and the allegations of Paragraphs (7) and (8) of *Count Four* and the allegations of Paragraphs (57) to (62), inclusive, of *Count Seventeen* hereof.

(63) Plaintiffs have suffered ordinary and special damages by reason of Defendant's breaches of said so-called mineral lease and said so-called non-exploration contract as aforesaid in that Plaintiffs have had responsible parties ready, able and willing to purchase Plaintiff's royalty share of Plaintiffs' said minerals and mineral rights and interests, but Plaintiffs have been unable to sell the same because of said breaches of said so-called mineral lease and said so-called non-exploration contract as aforesaid.

(64) Plaintiffs have suffered ordinary and special damages by reason of the foregoing in the sum of not less than $1,500,000.

Wherefore, Plaintiffs pray judgment against Defendant for their ordinary and special damages in the sum of not less than $1,500,000, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT NINETEEN.

Plaintiffs incorporate herein and make a part of *Count Nineteen* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (57) to (62), inclusive, of *Count Seventeen* hereof.

(65) Plaintiffs have no knowledge of Defendant's total production of minerals in the State of Texas or of Defendant's proven reserves in the State of Texas or of the proven reserves on said leased premises.

(66) Defendant has possession of the foregoing information referred to in the preceding Paragraph (65) hereof and so far as known to Plaintiffs Defendant is the sole person, firm or corporation having such information.

(67) Plaintiffs have demanded that Defendant furnish Plaintiffs with all of the information referred to in the preceding Paragraph (65) hereof, but Defendant has failed and refused to furnish the same to Plaintiff.

(68) Plaintiffs are entitled to disclosure and discovery of all of the information referred to in the preceding Paragraph (65) hereof.

Wherefore, Plaintiffs pray that Defendant be required by the order of decree of this Court fully to disclose and discover to Plaintiffs all of the information referred to in Paragraph (65) hereof, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TWENTY.

Plaintiffs incorporate herein and make a part of *Count Twenty* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count*

Four and Paragraphs (57) to (62), inclusive, of *Count Seventeen* hereof.

(69) An actual and justiciable controversy has existed and now exists between Plaintiffs, on the one hand, and Defendant, on the other hand, over the true construction, interpretation and meaning of Paragraph 8 of said so-called mineral lease and that part of said so-called non-exploration contract referred to in Paragraph (59) of *Count Seventeen* hereof, as follows:

(a) Whether Defendant is required to estimate Defendant's proven reserves in said leased premises and Defendant's proven reserves in the State of Texas reasonably and in relation to the explorations made by Defendant's geophysical and geologic technique, and to disclose and discover to Plaintiffs all of the geologic information obtained by Defendant by its geophysical and geologic technique, including dry holes, if any, in the vicinity of the productive structure or structures, if any, and from investigation with geophysical instruments or methods and or from other methods in use from time to time in the industry.

(b) Whether, in determining the quantities of oil, gas and other minerals which Defendant is required to produce from said leased premises and which are defined as and measured by that portion of Defendant's total production in the State of Texas that Defendant's proven reserves on said leased premises are of Defendant's total proven reserves in the State of Texas from time to time, the proven reserves in each producing structure on said leased premises are to be taken separately from the proven reserves in other producing structures, or whether the proven reserves in all structures are to be taken together for such purposes.

(c) Whether said so-called mineral lease has terminated as to all areas not reasonably developed as aforesaid.

(70) Plaintiffs assert that under the true construction, interpretation and meaning of the foregoing provisions of said so-called mineral lease and said so-called non-exploration contract, Defendant is required to estimate Defendant's proven reserves in said leased premises and the Defendant's proven reserves in the State of Texas reasonably and in relation to the explorations made by Defendant's geophysical and geologic technique, and to disclose and discover to Plaintiffs all of the geologic information obtained by Defendant by its geophysical and geologic technique, including dry holes, if any, in the vicinity of the productive structure or structures, if any, and from investigation with geophysical instruments or methods and/or from other methods used from time to time in the industry; that in determining the quantities of oil, gas and other minerals which Defendant is required to produce from said leased premises and which are defined as and measured by that portion of Defendant's total production in the State of Texas that Defendant's proven reserves on said leased premises are of Defendant's proven reserves in the State of Texas from time to time, the proven reserves in each producing structure on said leased premises are to be taken separately from the proven reserves in other producing structures for such purposes; and that said so-called mineral lease has terminated as to all areas not reasonably developed as aforesaid.

(71) Defendant asserts that under the true construction, interpretation and meaning of the foregoing provisions of said so-called mineral lease and said so-called non-exploration contract Defendant is not required to estimate

Defendant's proven reserves in said leased premises and Defendant's proven reserves in the State of Texas reasonably and in relation to the explorations made by Defendant's geophysical and geologic technique, and to disclose and discover to Plaintiffs all of the geologic information obtained by Defendant by its geophysical and geologic technique, including dry holes, if any, in the vicinity of the productive structure or structures, if any, and from investigation with geophysical instruments or methods and/or from other methods used from time to time in the industry; that in determining the quantities of oil, gas and other minerals which Defendant is required to produce from said leased premises and which is defined as and is measured by that portion of Defendant's total production in the State of Texas that Defendant's proven reserves on said leased premises are of Defendant's total proven reserves in the State of Texas from time to time, the proven reserves in all producing structures on said leased premises are not to be taken together for such purposes; and that said so-called mineral lease has not terminated as to all areas not reasonably developed as aforesaid.

(72) Plaintiffs are entitled to a judgment or decree of this Court adjudging and decreeing the true construction, interpretation and meaning of Paragraph 8 of said so-called mineral lease and that part of said so-called non-exploration contract hereinabove referred to, without prejudice to the issue as to the initial validity of said so-called mineral lease as determined in said Cause No. 1539.

Wherefore, Plaintiffs pray that this Court enter a judgment or decree adjudging and decreeing the true construction, interpretation and meaning of said so-called mineral lease and said so-called non-exploration contract and adjudicating and determining the several issues or questions hereinabove stated, without prejudice as to the issue as to

the initial validity of said so-called mineral lease, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TWENTY-ONE.

Plaintiffs incorporate herein and make a part of *Count Twenty-One* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* hereof.

(73) On or about September 26, 1933, contemporaneously with the execution and delivery of said so-called mineral lease and as a part of the same transaction, Defendant as lessee entered into a so-called contract with the Executors and Trustees of the Estate of Henrietta M. King, Deceased, and others, as lessors, a copy of which so-called contract is attached hereto and made a part hereof, marked "Exhibit M".

(74) Said contract provides in part as follows:

> "Before making the applications herein provided for upon said notes out of the proceeds of said royalties the lessors in said lease shall be entitled to retain a sufficient amount out of such proceeds to pay such income taxes as may be assessed against them by reason of their income from such royalties."

(75) Defendant failed and refused to pay to Plaintiffs or to permit Plaintiffs to retain a sufficient amount out of the proceeds of Plaintiffs' royalty share of said minerals to pay the income taxes which were assessed against them by reason of their income therefrom, to their damage in the sum of not less than $100,000.

Wherefore, Plaintiffs pray judgment against Defendant for their damages in the sum of not less than $100,000, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TWENTY-TWO.

Plaintiffs incorporate herein and make a part of *Count Twenty-Two* hereof each and all of the allegations of Paragraph (1) of *Count One* and Paragraphs (7) and (8) of *Count Four* and Paragraphs (24) to (34), inclusive, of *Count Eight* hereof.

(76) Plaintiffs have formally demanded from Defendant that Defendant deliver to Plaintiffs all of the oil and pay to Plaintiffs all of the moneys to which Plaintiffs are entitled by reason of the extraction of oil and gas from the minerals so owned by Plaintiffs as aforesaid.

(77) Defendant has failed and refused to deliver any of said oil and to pay any of said moneys to Plaintiffs referred to in the preceding Paragraph (76) hereof.

(78) Plaintiffs are entitled to a judgment or decree of this Court adjudging and decreeing that said so-called mineral lease and said so-called non-exploration contract and said so-called contract, and all other instruments executed as a part of said transaction entered into on September 26, 1933 as aforesaid, insofar as the same affect any of the minerals and mineral interests so owned by Plaintiffs as aforesaid, have forever terminated by reason of the material breaches thereof by Defendant as aforesaid.

Wherefore, Plaintiffs pray the Court to enter a judgment or decree adjudging and decreeing that said so-called mineral lease and said non-exploration contract and said contract and all other instruments executed as a part of said transaction of September 26, 1933, insofar as the same affect any of the minerals and mineral interest so owned by Plaintiffs as aforesaid, have forever terminated by reason of the breaches thereof by Defendant as aforesaid, and for their costs; and that Plaintiffs may have all other general and special relief.

COUNT TWENTY-THREE.

Plaintiffs incorporate herein and make a part of *Count Twenty-Three* hereof each and all of the allegations of *Counts One* to *Twenty-One*, inclusive, hereof.

(76) Plaintiffs are entitled to legal interest at the rate of six per cent (6%) per annum upon each and all of the moneys adjudged and decreed to be due to Plaintiffs from Defendant as hereinabove set forth from the date or dates upon which the same became due and payable to Plaintiffs as aforesaid.

Wherefore, Plaintiffs pray that a money judgment or decree be entered by this Court in Plaintiffs' favor and against Defendant for a sum equal to legal interest at the rate of six per cent (6%) per annum upon all moneys found to be due to Plaintiffs from Defendant as hereinabove alleged from the date or dates upon which the same became due and payable to Plaintiffs as aforesaid, and for their costs; and that Plaintiffs may have all other general and special relief.

EDWIN K. ATWOOD,
ALICE B. ATWOOD,
RICHARD W. ATWOOD, by Alice B. Atwood as his Next Friend and Conservatrix,

ALICE B. ATWOOD, as Conservatrix of the Estate of Richard W. Atwood,

THOMAS H. FISHER,
RUTH P. FISHER,

By.....
Their Attorneys,
Plaintiffs.

EXHIBIT A.

(Lease, Executors and Trustees under Will of Henrietta M. King to Humble Oil & Refining Company, Dated Sept. 26, 1933.)

This Agreement made this 26th day of September, 1933, between Caesar Kleberg and Richard King, independent executors and trustees under the will of Mrs. Henrietta M. King, deceased, and Robert J. Kleberg, Jr., John D. Finnegan, Samuel C. Ragland and Richard Mifflin Kleberg, all trustees under the will of Mrs. Henrietta M. King, deceased, and Alice G. K. Kleberg, individually and as independent executrix of the estate of Robert J. Kleberg, Sr., deceased, and Robert J. Kleberg, Jr., and Richard Mifflin Kleberg as advisory executors of the estate of Robert J. Kleberg, Sr., deceased, lessors, and Humble Oil & Refining Company, lessee, Witnesseth:

1. Lessors in consideration of One Hundred ($100.00) Dollars and other valuable considerations in hand paid, of the royalties herein provided and of the agreements of lessee herein contained, hereby grant, lease and let exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling and mining for and producing oil, gas and all other minerals, laying pipe lines, building tanks, power stations, telephone lines and other structures thereon to produce, save, take care of, treat, transport, and own said products, and housing its employees, all of the following described land, to-wit:

The following described lands situated in Kleberg, Jim Wells, Kenedy, Nueces, Brooks, Hidalgo, Willacy, Starr, Jim Hogg, Goliad and Bee Counties in the State of Texas, constituting what is known as the King Ranch lands, belonging to the Estate of Henrietta M. King, and consisting of the following tracts:

First: The tract of land known as the Laureles Ranch, situated in Kleberg and Nueces Counties, Texas bounded as follows: On the east by the Laguna Madre, on the south by Baffins Bay and Alazan Bay, on the west by the Cayo del Grullo and San Fernando Creek, and on the north by the line between Nueces and Kleberg Counties with the exception that the following portions of said Ranch run over into Nueces County:

(a) A tract of land containing eleven hundred sixty-eight (1168) acres out of the Blas Maria Falcon Grant, known as the "El Chiltipin", which tract is a triangular tract lying within the King Ranch fence immediately west of the Agua Dulce Creek;

(b) A tract of land consisting of the following surveys and parts of surveys: fourteen thousand five hundred sixty (14,560) acres out of Abstract 411, Survey 605, Original Grantee R. de Hinojosa, known as "Rincon de Corpus Christi"; two thousand one hundred thirty (2,130) acres out of Survey in the name of J. P. and J. M. Rey, known as the Laureles Grant; three hundred twenty (320) acres, the south one-half of Fractional Section 32 of Laureles Farm Tracts; one thousand six hundred eighty-seven (1,687) acres, the north one-half of Fractional Sections Fifty-three (53), Fifty-four (54), Fifty-five (55), Fifty-six (56), Fifty-seven (57) and Fifty-eight (58) of Laureles Farm Tracts; five hundred ninety-five (595) acres out of Fractional Sections Fifty-four A (54A), Fifty-five A (55A) and Fifty-six A (56A) of Laureles Farm Tracts.

The said tracts form one solid body, bounded on the west by lands of J. O. Chapman, et al., on the east by Laguna Madre, on the north by the King Ranch north fence, and the Cayo del Oso Creek, and on the south by the Nueces County line and the balance on the said Laureles Ranch.

The said Laureles Ranch includes approximately the following acreages out of the following grants, to-wit:

(1) Acreage in Kleberg County

Abstract	Survey	Original Grantee	Acres
240	598	J. A. Hinojosa "Los Sauces"	28,008
92	605	Blas Maria Falcon "El Chiltipin"	19,034
207	595	J. R. and J. M. Rey and M. Garcia	95,179
231	602	Andres Trevino, "Las Comitas"	20,510
241	603	Vincente Hinojosa, "El Alazan"	29,375
99	604	B. Garcia "El Infernillo"	21,471.53
90	39	F. M. Dimond	4,428
21	607	J. B. Bulvese	4,605
130	397	I. G. N. Railway	612
131	396	I. G. N. Railway	640
132	390	I. G. N. Railway	640
133	391	I. G. N. Railway	640
134	392	I. G. N. Railway	640
135	393	I. G. N. Railway	640
136	394	I. G. N. Railway	640
137	395	I. G. N. Railway	640
138	389	I. G. N. Railway	640
139	386	I. G. N. Railway	640
140	388	I. G. N. Railway	640
141	387	I. G. N. Railway	640
238	610	A. Whitaker	2,028
239	609	James Wilden	1,476
116	608	Silas A. Gordon	800
			234,566.53

(2) Acreage in Nueces County:

Abstract	Survey	Original Grantee	Acres
109	605	Blas Maria Falcon, "El Chiltipin"	1,168
411	605	R. de Hinojas "Ricon de Corpus Christi"	14,560
		J. P. & J. M. Rey and M. Garcia, "Laureles"	2,130
		S. ½ Sec. 32, Laureles Sub.	320
		N. ½ Sec. 53 to 58, Laureles Sub.	1,687
		Sec. 54A to 56A, Laureles Sub.	595
			20,460
Total acreage in Laureles Ranch			255,026.53

It is intended to include herein all of the said Laureles Ranch, and if the foregoing description omits any of the said Laureles Ranch, the same is nevertheless hereby included.

Second: The tract of land known as the Santa Gertrudis Ranch, situated in Kleberg, Jim Wells and Brooks Counties, including approximately the following acreage out of the following surveys:

(1) Acreage in Brooks County:

Abstract	Survey	Original Grantee	Acres
666	Fr. 573	H. M. King (Balance listed in Kleberg Co. lands below.)	245
226		R. de la Garza "El Paisano" (The King Estate owns the portion of said Survey lying east of the Burton & Danforth Subdivision and the said 311 acres is the portion thereof lying in Brooks County, the remaining portion being described hereinafter in the Kle-	311

(2) Acreage in Kleberg County:

Abstract	Survey	Original Grantee	Acres
1	199	Adams, B. & M.	640
2	197	Adams, B. & M.	640
3	195	Adams, B. & M.	640
4	351	Abbey, Nancy	1,280
5	70	Alvarado, E.	80
6	69	Alvarado, E.	160
7	68	Alvarado, E.	160
8	271	A. Crain, et al	544.75
104	273	Gibson	563
		(Said acreage out of Survey 271 and 273 *includes* all of Survey 271 and 273 except 563.35 acres out of said Surveys described in the deed from Henrietta M. King to Felciana Cisneros de Rotge and Tomasa C. de Canales dated Feb. 14, 1905, recorded in Vol. 17, pages 592-3 Deed Records of Kleberg County, Texas. But there are included herein 322.5 acres known as Las Motas Ranch out of said 563.35 acres purchased by the Executors and Trustees of the Estate of Henrietta M. King at deed of trust sale, as per deed recorded in Deed Records of Kleberg County.)	
11	20	E. B. Barton	241.66
		(Being all of said Survey except the portion thereof owned by C. W. Hill.)	
12	248	E. B. Barton	28.9
13	64	E. B. Barton	28.86
		(Being all of said two Surveys except the portion owned by C. W. Hill.)	

14	18	Bazan, Luciano	160
15	601	J. J. Berban	4,605
		(Being all of said survey except a small strip off the east side in King Addition #3.)	
16	352	Bland, Susana	449
		(Being the part lying in the King Pasture.)	
17	355	Bland, Susana	618
19	289	Breeding, C.	327
		(Being all the Survey except a small strip off the east side lying in King Add. #3.)	
20	356	Breeding, C.	108
22	216	Byington, S.	80
23	242	Byington, S.	640
24	191	Beatty, S. and F.	640
25	187	Beatty, S. and F.	640
26	189	Beatty, S. and F.	640
28	185	Beatty, S. and F.	626
27	183	Beatty, S. and F.	36.63
		(Being all of said Survey except the portion owned by C. W. Hill.)	
29	245	Beatty, S. and F.	640
30	257	Beatty, S. and F.	500
31	255	Beatty, S. and F.	640
32	253	Beatty, S. and F.	439
33	891	Beatty, S. and F.	367
35	300	Cadena, A.	640
36	302	Cadena, A.	640
37	296	Cadena, A.	640
38	290	Cadena, A.	640
39	326	Cadena, A.	640
40	338	Cadena, A.	460
		(The part lying east of the Canales Ranch and in the King Pasture.)	
41	352	Cadena, A.	640

42	314	Canales, A. (N. ½)	320
43	256	Canales, A.	640
45	291	C. C. S. D. R. G. Ry.	640
46	316	Canales, V.	640
47	314	Canales, V. (S. ½)	320
48	262	Cantu, Julia	640
49	57	Cisneros, J. S.	91.75
50	13	Cortez, Julian	160
55	289	C. C. S. D. R. G. Ry.	640
56	291	C. C. S. D. R. G. Ry.	640
57	293	C. C. S. D. R. G. Ry.	640
58	295	C. C. S. D. R. G. Ry.	640
59	297	C. C. S. D. R. G. Ry.	599
60	299	C. C. S. D. R. G. Ry.	640
61	301	C. C. S. D. R. G. Ry.	640
62	303	C. C. S. D. R. G. Ry.	640
64	307	C. C. S. D. R. G. Ry.	640
63	305	C. C. S. D. R. G. Ry.	640
65	309	C. C. S. D. R. G. Ry.	640
66	311	C. C. S. D. R. G. Ry.	640
67	313	C. C. S. D. R. G. Ry.	640
68	315	C. C. S. D. R. G. Ry.	640
69	317	C. C. S. D. R. G. Ry.	640
70	319	C. C. S. D. R. G. Ry.	640
71	321	C. C. S. D. R. G. Ry.	640
72	323	C. C. S. D. R. G. Ry.	640
73	325	C. C. S. D. R. G. Ry.	640
74	327	C. C. S. D. R. G. Ry.	640
75	329	C. C. S. D. R. G. Ry.	640
76	331	C. C. S. D. R. G. Ry.	640
77	333	C. C. S. D. R. G. Ry.	640
78	335	C. C. S. D. R. G. Ry	640
79	337	C C. S. D. R. G. Ry.	640
84	349	C. C. S. D. R. G. Ry.	640
85	353	C. C. S. D. R. G. Ry.	640
89	52	Dickson, W. L., the east	248
91		Erwin, James	198.98
94	48	Fitch, John	160
95	318	Fitch, John	640
96	320	Fitch, John	640

97	328	Fitch, John	640
98	53	Flores, Ignacio	160
100	32	Garza, Ramon "El Paisano" (Being the part lying east of the Burton & Danforth Sub.)	1,349.58
101		Garza, L. L., de la "Rincon del Grullo"	835
102		Garza, J. J., J. D., & J. L., "Santa Gertrudis" (Being all of the said J. J., J. D., and J. L. Garza "Santa Gertrudis" Grant lying in Kleberg County except the portion thereof contained in the tract of 30,439 acres conveyed to Alice G. K. Kleberg by Mrs. H. M. King by deed of record in Kleberg County, Texas.)	40,591.75
105	298	Cadena, A.	599
106	312	Gonzales, M.	640
107	310	Gonzales, M.	640
108	324	Gonzales, M.	640
109	330	Gonzales, M.	640
110	332	Gonzales, M.	640
113	304	Gonzales, M.	640
114	306	Gonzales, M.	640
115	308	Gonzales M.	640
118		Gutierrez, M., "Santa Gertrudis" (Being that portion of the M. Gutierrez Survey lying North of the King Addition #3 and lying south of the 30,439 acre tract conveyed by Mrs. H. M. King to Alice G. K. Kleberg.)	1,385
125	99	G. G. & H.	529
119	600	Gutierrez, A., "El Pasadizo"	3,500

		(The said 3500 acres is that portion of said grant remaining in the King Pasture lying south of the King Addition #3. There were originally 852 acres more in the said tract lying south of said Subdivision and said 852 acres were sold by the Estate of Henrietta M. King to H. Andrews by deed of record in Kleberg County, leaving said 3500 acres lying in two tracts, a little more than 100 acres of which is in farm tract adjoining Missouri Pacific Railway, and outside of the King Pasture, and the balance is all in the King Pasture.)	
126	47	G. G. & H.	640
127	49	G. G. & H.	640
142	334	Jensen, J. R.	640
144	268	T. T. RR. Co.	548
146	401	H. M. King	100
147	**402**	H. M. King	12.60
148	404	H. M. King	113.20
149	641	H. M. King	9
150	892	H. M. King	413
152	125	R. King	382
154	292	R. King	640
156	294	R. King	640
157	188	R. King	640
158	274	King, E. M.	640
159	272	King, E. M.	640
160	**64**	King, R. E. L.	452
164	190	King, R. E. L.	640
165	178	King, R. E. L.	640
166	48	King, R. E. L.	640
167	192	King, R. E. L.	640
169	184	King, R. E. J. (S. ½)	320

170	402	King, R. E. L.	320
171	170	King, R. E. L.	320
172	172	King, R. E. L.	640
173	174	King, R. E. L.	640
174	176	King, R. E. J.	640
175	186	King, R. E. L. (N. ½)	320
176	240	King, A. G.	233
177	246	King, A. G.	640
178	264	King, A. G.	640
179	50	King, A. G.	640
180	248	King, A. G.	480
181	100	Kleberg, R. J.	540
182	254	Kleberg, R. J.	640
183	256	Kleberg, R. J.	640
184	258	Kleberg, R. J.	390
185	196	Lovinskiold	640
186	200	Lovinskiold	640
187	194	Lovinskiold	640
188	198	Lovinskiold	640
189	186	Martinez, M. R. (S. ½)	320
190	184	Martinez, M. R. (N. ½)	320
193	193	Morris and Co.	640
194	288	McCollough, J. L.	1,280
196	51	Ollos, E. de	80
197	50	Ollos, Pablo	160
198	67	Alvarado, E.	160
199	2	Patterson, Wm.	88
200	376	Pinto Irrig. Co.	640
201	51	Poitevent, J.	640
202	375	Presidio, I. Co.	640
204	43	Ramos, Pedro	160
205	1	Reeve, A.	160
206	21	Reyes, G.	160
210	20	Salinas, A.	160
213	244	Smith, James	640
214	169	Stone, K. & K.	320
215	401	Stone, K. & K.	320
216	171	Stone, K. & K.	640
217	173	Stone, K. & K.	640
218	175	Stone, K. & K.	640

219	177	Stone, K. & K.	640
220	179	Stone, K. & K. (Being the part of said survey in Kleberg County.)	112
221	181	Stone, K. & K. (Being the part of said survey in Kleberg County.)	196
222	247	Stone, K. & K.	640
223	239	Stone, K. & K.	640
224	241	Stone, K. & K.	640
225	243	Stone, K. & K.	640
228	23	Tijerina, M.	320
229	14	Tijerina, A.	160
233	261	Tyler Tap Co.	640
234	263	Tyler Tap Co.	640
235	265	Tyler Tap Co.	640
236	267	Tyler Tap Co.	216
237	52	Vallejos, J. M.	160
254	539	H. M. King	59.37
255	573	H. M. King	176
263	800	Barton, E. B.	53.80
	63	Chamberlain, W. C.	53
All 49 to 56		Mrs. H. M. King's 2d Sub.	3,727.60
All 275 to 285		Mrs. H. M. King's 2d Sub.	5,133.50
All 283 except Lot 3		Mrs. H. M. King's 2d Sub.	579.44
All 284 to 285		Mrs. H. M. King's 2d Sub.	1,288.51
All 354 to 356		Mrs. H. M. King's 2d Sub.	1,031.89
All of 1		King Addition No. 3	681
W½ and SE¼	4	King Addition No. 3	512.60
S½ and SE¼	17	King Addition No. 3	80
Pt. 1-2-3-4-5-6-7 & pt. 6-7	4	Kleberg T. & I. Co. Sub.	208
Part 1	5	Kleberg T. & I. Co. Sub.	3.60
Part 5	5	Kleberg T. & I. Co. Sub.	23.40
Part 1	12	Kleberg T. & I. Co. Sub.	23.83
Part 4-5-6	19	Kleberg T. & I. Co. Sub.	111.53

(Said land out of the Kleberg T. & I. Co. Sub. is the part of said tract lying in the King Pasture along San Fernando Creek near the Caesar Shipping Pens.)

(3) Acreage in Jim Wells County:

Abstract	Survey	Original Grantee	Acres
55	60	F. Briones	12.62
64	257	B. S. & F. ....North	140.10
68	291	B. S. & F. ....North	140
128	52	W. L. Dickson, W½	320
129	52	W. W. Dickson, E½	72
173		Garza, J. J., J. D., & J. L., "Santa Gertrudis" (Being all of said Survey lying in Jim Wells County except tract of approximately 300 acres belonging to R. Driscoll Estate, situated west of the Southern Pacific right-of-way and Highway #66, and outside of the King Pasture.)	18,495
186	214	A. B. & M.	640
191	99	G. H. & H. ....North	111
259	268	J. Kavanaugh	92
265	64	R. E. L. King ....North	132
267	240	A. G. King	408
268	403	H. M. King	35.20
272	100	R. J. Kleberg ....North	140
274	212	R. J. Kleberg ....East	272.50
275	258	R. J. Kleberg ....North	250
282	61	D. Lopez	160
305	362A	C. McKenzie	142
377	18	A. Quintanillo ....East	89.75
378	3	A. Ramirez, "Los Jaboncillos"	1,814

		(Being the portion of said Survey purchased by Mrs. H. M. King from Matt Dunn by deed recorded in the Deed Records of Jim Wells County, Texas.)		
481	63	S. A. & G.	West	437
497	59	R. Tanguma		145
508	267	Tyler Tap Ry.		424

Total acreage in Santa Gertrudis Ranch 173,028.90

It is intended to include all of the lands constituting what is known as the Santa Gertrudis Ranch, and if any of the lands in said Ranch are not included in the foregoing description, they are hereby included herein. (However, the tract containing approximately thirty thousand four hundred thirty-nine (30,439) acres out of the Santa Gertrudis Ranch conveyed by Mrs. H. M. King to Alice G. K. Kleberg by deed of record in Kleberg County, Texas, is not included herein.)

Third: The tract of land known as the Norias East or El Sauz Ranch, situated in Kenedy and Willacy Counties, Texas, bounded on the east by the Laguna Madre, on the north by the land of the Kenedy and Armstrong Ranches, on the west by the following tracts: Armstrong Ranch, the Norias West lands out of the San Salvador del Tule Grant described in the next item, the La Tordilla Pasture or Stillman Pasture belonging to Robt. J. Kleberg, Jr., Trustees, the Yturria Ranch, Gulf Coast Irrigation Company Subdivision, the Withers tract, Harding and Gill Subdivision of Share No. Sixteen, Harding and Gill Subdivision of Share No. Sixty-one, Share No. Thirty-four, Share No. Thirteen except 193.9 acres lying in the King Pasture, Share No. Seven except 634.8 acres lying in the King Pasture, and Share No. Three; on the south by the

Armendiaz Ranch or Share No. Four and the Arroyo Colorado. The share numbers referred to in this description of the Norias East Ranch are described in the Decree of Partition of the San Juan de Carricitos Grant in cause styled *Richard King* v. *the Heirs and Assigns of Narciso Cavazos*, Deceased, No. 1227 in the District Court of Cameron County, recorded in Vol. I, pages 437 to 513, Deed Records of Cameron County, Texas. Included in the said Norias East or El Sauz Ranch are the following tracts containing approximately the following acreages out of the following surveys:

(1) Acreage in Kenedy County:

Abstract	Survey	Original Grantee	Acres
3		Juan Francisco Balli, "La Barreta"	20,621.

(Said lands out of La Barreta Grant were conveyed to Mrs. King in two conveyances as follows:

(a) 16,717.4 acres conveyed by J. N. Gunter and T. D. Jones to Mrs. King by deed dated Jan. 27, 1903, recorded in Vol. N, pages 47-48 Deed Records of Cameron County, Texas, in which County said land was then situated:

(b) Deed from John B. Armstrong to Henrietta M. King conveying 3,904 acres, dated Jan. 13, 1903, recorded in Vol. M, pages 334-336 Deed Records of Cameron County, Texas.

The Land is fully described in the deeds, here referred to for more complete description.)

Abstract	Survey	Original Grantee	Cert.	
8	491	Jose Narciso Cavazos, "San Juan de Carricitos"	35	192,222.

(2) Acreage in Willacy County:

Abstract	Original Grantee

3	Jose Narciso Cavazos, "San Juan de Carricitos"	Share 7B	634.8
		Share 13C	193.9
		Share 28	2,745.5
		Share 46	187
		Share 59 "2"	80
		Share 59 "1"	155.9
		Share 60 ABC	3,345.2
		Share 64	101,513.

Total acreage in El Sauz Ranch 321,698.30

It is intended to include in the foregoing tracts all of the lands situated in the Norrias East or El Sauz Ranch, and if any are omitted in the foregoing description, they are nevertheless hereby included.

Fourth: The lands constituting what is known as the Norias or Norias West Ranch situated in Kenedy, Hidalgo and Brooks Counties, Texas, located in the tract of land originally granted by the Spanish Government in America to Juan Jose Balli, known as the "San Salvador dul Tule" Grant, and in the tract of land granted by the State of Tamaulipas, Mexico, the Gil Zarate Y Bayarena, known as the "La Blanca" Grant, and the hereinafter described sectionized land purchased from the State of Texas. Except the following tracts which were sold by the State of Texas under mineral classification:

(a) *The following sectionized land in Brooks County:*

Abstract	Cert.	Survey	Original Grantee	Acres
228	178	140	Hilario Garza	226

(Being the part in Brooks County.)

(b) *The following sectionized land in Kenedy County*:

Abstract	Cert.	Survey	Original Grantee	Acres
36	732	491	F. B. Dodge	859
141	174	132	Tex-Mex Ry. Co.	640
				1,725

The said Ranch includes approximately the following acreages in the following tracts:

(1) *In the San Salvador del Tule Grant*:

		Acres
Tract No. 1	containing	26,274.
Tract No. 2	containing	40,734.70
Tract No. 2A	containing	215.30
Tract No. 3B	containing	152.20
Tract No. 4	containing	32,488.
Tract No. 5	containing	2,522.
Tract No. 6	containing	4,137.20
Tract No. 7	containing	6,492.
Tract No. 91 Parcel 2	containing	3,147.50
Tract No. 95 Parcel 2	containing	11,809.90
Total		127,972.80

Said lands being set aside to the Executors and Trustees of the Estate of Henrietta M. King by the final Decree of Partition in cause styled *Emily McManus* v. *Urbano Anzaldua, et al.*, No. 422 in the District Court of Hidalgo County, Texas, recorded in the Deed Records of Hidalgo County, Texas, the said tracts being described by meles and bounds in said Decree here referred to for description. Of the said land, 20,326 acres is situated in Brooks County. 42,910 acres is situated in Kenedy County and 64,736.80 acres is situated in Hidalgo County, Texas.

(2) *In the La Blanca Grant:*

Abstract	Original Grantee	Acres
654	Gil Zarate "La Blanca"	11,147.

Being all of the "La Blanca" Grant with the exception of that portion thereof belonging to Robt. J. Kleberg, Jr., Trustee, described in the deed from Ed. C. Lasater, et al, to Robt. J. Kleberg, Jr., recorded in Vol. 7, pages 597-601 Deed Records of Brooks County, Texas, and Vol. 2, pages 540-547 Deed Records of Kenedy County. Of the said land out of said Grant included herein, 1,190 acres is situated in Hidalgo County and 9,957 acres is situated in Brooks County.

(3) *The following sectionized land in Brooks County:*

Abstract	Cert.	Survey	Original Grantee	Acres
536	179	141	T. M. Ry. (Being the part in Brooks County.)	68
537	180	143	T. M. Ry.	640
538	181	145	T. M. Ry.	640

(4) *The following sectionized land in Kenedy County:*

Abstract	Cert.	Survey	Original Grantee	Acres
109	174	131	Tex-Mex Ry. Co.	640
110	175	133	Tex-Mex Ry. Co.	640
111	176	135	Tex-Mex Ry. Co.	640
113	178	135	Tex-Mex Ry. Co.	640
114	179	141	Tex-Mex Ry. Co. (The part in Kenedy County.)	572
39	178	140	Fr. Hilario Garza T. M. Ry. Co. (The part in Kenedy County.)	414
	177	137	Tex-Mex Ry. Co.	640

(5) *The following sectionized land in Hidalgo County:*

Abstract	Survey	Original Grantee	Acres
160	159	Tex-Mex Ry. Co.	337
161	161	Tex-Mex Ry. Co.	161.50
641	160	Tex-Mex Ry. Co.	350.50
642	164	Tex-Mex Ry. Co.	179
	162	Tex-Mex Ry. Co.	141.60
	163	Tex-Mex Ry. Co.	164.50
761	1	Doughty	185.60

Total acreage in Norias West Ranch	147,258.50
Less the tracts listed above which were sold by the State of Texas under mineral classification	1,725.
Net acreage	145,533.50

The said foregoing land described as Norias West Ranch lies in two bodies, one, the main body of the Norias Ranch, and the other known as the La Coma Tract, which is situated southeast of the main pasture.

It is intended to include in the foregoing description all of the lands contained in the said Norias Ranch, and if any is omitted from the foregoing description, it is nevertheless hereby included.

Fifth: The tract of land formerly known as the Ellis Ranch, situated in Bee and Goliad Counties, Texas, containing seven thousand eleven and 50/100 acres ....7,011.50 more or less, fully described in deed from T. E. Berry and wife Viola Berry, and W. D. Ellis and wife Lillie Ellis, to Robert J. Kleberg, Jr., Trustee, dated May 25, 1920, recorded in Vol. 58, pages 468-71 Deed Records of Bee County, Texas, here referred to for complete description.

Sixth: The following described land situated in Jim Hogg and Starr Counties, Texas, to-wit:

Group 1. Those lands containing sixty thousand two hundred seventy-eight and 59/100 acres be the same more or less, located in said Counties of Jim Hogg and Starr, State of Texas, and being all and every tract and parcel of land described in that certain deed of trust from T. T. East and wife Alice K. East to Commerce Trust Company, Trustee, dated September 8, 1920, recorded in Vol. 1, pages 428-445 Deed of Trust Records of Jim Hogg County, Texas, which instrument is also of record in Vol. 1, pages 282-297 Deed of Trust Records of Starr County, Texas, covering 60,278.59 acres of land, be and the same more or less; and reference is here made to said deed of trust and to the record thereof in each and both of the Counties of Jim Hogg and Starr hereinabove referred to for particular description of the land therein described and included herein. 60,278.59

Group 2. Those lands containing eight thousand two hundred forty-six and 5/10 acres ..... be the same more or less, located in the Counties of Jim Hogg and Starr in the State of Texas, and being all and each of those several tracts of land described in a deed dated October 27, 1917, from E. R. Jensen and wife Mary E. Jensen to T. T. East, which deed is recorded in Book 41 pages 94-96 Deed Records of Starr County, Texas, and in Vol. 2, pages 327-328 and Vol. 12, pages 621-624 Deed Records of Jim Hogg County, Texas, to which deed and the several records thereof in both Counties reference is here made for full 8,246.5

and particular description of the lands therein described and included herein.

Group 3. Those lands containing six thousand six hundred eleven 96/100 acres ..... 6,611.96 be the same more or less, in Starr County, Texas, being each and all of the several tracts of land described in a certain deed dated October 27, 1917, from E. R. Jensen, and wife Mary E. Jensen to T. T. East, which deed is of record in Vol. 41 pages 96 to 101 Deed Records of Starr County, Texas, and which is also recorded in Vol. 12 pages 615-621 Deed Records of Jim Hogg County, Texas, to which deed and the records thereof in each of said Counties reference is here made for a more particular description of the land therein described and included herein.

The above three groups of land located in the aforesaid Counties of Starr and Jim Hogg, State of Texas, are also the lands described in (by reference) and conveyed by a deed from T. T. East and wife Alice Kleberg East to Mrs. Henrietta M. King dated March 25, 1922, and recorded in Vol. 3, pages 300 to 305 Deed Records of Jim Hogg County, Texas, and also recorded in Book 46 at pages 582-587 Deed Records of Starr County, Texas, to which deed and the record thereof reference is here made for all purposes.

4. A tract of land out of the east one-half of Survey No. 33, Abstract 326, and the west one-half of Survey No. 34, Abstract 326, fully described in the deed by which said land was conveyed to the said Trustees of the Estate of Hen-

rietta M. King, deceased, dated September 12, 1932, and recorded in Vol. 13, pages 508-9 of the Deed Records of Jim Hogg County, Texas, containing ..... 640.

Six hundred forty acres of land, more or less.

Total acreage of said Jim Hogg and Starr Counties land ..... 76,227.

Excepting, however, the following lands sold by the State of Texas under mineral classification:

(a) *The following land situated in Starr County:*

200 acres, known as the northwest part of Section 296, Certificate 231, Survey CCSD & RGNG RR Co. containing 640 acres, being all of that part of said Section which was sold by the State under mineral classification ..... 200.

Section	Cert.	Survey Name	
258	391	CCSD & RGNG Ry. Co.	640
216	360	CCSD & RGNG Ry. Co.	640
568	2/77	J. Poitevent	640
876	2684	GC & SF Ry. Co.	395
368	1/55	GC & SF Ry. Co.	640
166	1279	B. S. & F.	640
366	669	T. T. Ry. Co.	640
292	158	GB & CNG Ry. Co.	640
574	95	Georgetown Ry. Co.	616.3
24	458	A. B. & M.	640

(b) *The following land situated in Jim Hogg County:*

The south part of Section 112, Certificate 77, Survey S. K. & K. con-

taining 640 acres, being the portion of said Section sold by the State under mineral classification 485

Section	Cert.	Survey Name	
42	717	A. B. & M.	640
			7,454.30
			68,772.70

It is the intention to include all land owned or claimed by Lessor adjacent or contiguous to the land particularly described above, whether the same be in said Survey or Surveys, or in adjacent surveys.

There is included in the foregoing six tracts the total of ..... 971,711.43 acres, more or less.

The right-of-way and other pipe line privileges granted to lessee herein may be exercised by it or any other person, firm or corporation that may be designated by it from time to time.

2. Without reference to the commencement, prosecution or cessation at any time of drilling or other development operations, and/or to the discovery, development or cessation at any time of production of oil, gas or other minerals, and without further payments than the royalties herein provided, and notwithstanding anything else herein contained to the contrary, this lease shall be for a term of twenty years from this date; and at the expiration of said twenty years if oil, gas or other mineral is then being produced from said land, the lessee shall promptly designate and define in writing the area or areas on which oil, gas and/or other minerals are then being

produced, it being contemplated that lessee shall have the right to retain under the terms of this lease the area or areas included within the geologic structures or formations proven to be productive at the end of said twenty year period; and in determining what area or areas are proven to be productive only the area or areas shall be designated from which there are being produced oil, gas and/or other minerals at the end of such twenty year period, and in determining the extent of such productive area or areas consideration shall be given to geologic information obtained from all wells including dry holes, if any, in the vicinity and from the surface geology and from investigation with geophysical instruments or methods and/or from other methods which then may be in use in the industry; and as to said area or areas the lease shall continue as long thereafter as oil, gas, or other mineral is produced therefrom.

3. The royalties to be paid by lessee are: (a) On oil, one-eighth of that produced and saved from said land, the same to be delivered at the wells or to the credit of lessors in the pipe line to which the wells may be connected; (b) on gas, including casinghead gas and other vaporous or gaseous substances produced from said land and sold or used off the premises or in the manufacture of gasoline or other product therefrom, or otherwise sold or used, except in operation of the lease, the market value at the well of one-eighth of the gas so sold or used, provided that in case lessee shall sell gas at the wells, the royalty shall be one-eighth of the amount realized from such sale; (c) On sulphur mined and marketed from the premises, a royalty of One ($1.00) Dollar per long ton; and (d) On all other minerals mined and marketed, a reasonable royalty.

4. Lessee shall have free use of oil, gas, wood and water from said land, except water from lessors' wells, for all operations hereunder, and the royalty on oil, and gas shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessors, lessee will bury all pipe lines below ordinary plow depth, and no well shall be drilled within two hundred feet of any residence or barn now on said land without lessor's consent. Lessors shall have the privilege at their risk and expense of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon out of any surplus gas not needed for operations hereunder.

5. The lessee shall use diligence not to injure the water structures from which the water wells on the properties are producing water and not to injure any of said wells; and in event any of said wells are injured or destroyed by operations under the lease, lessee shall repair or replace them.

6. The lessee and its employees shall not have the right or privilege of hunting or carrying fire arms on the premises, and lessors may exclude from the premises any employee carrying fire arms, but violation of this provision shall not in any manner work a forfeiture of this lease.

7. The rights of lessors may be assigned in whole or in part, and the provisions hereof shall extend to their heirs, successors and assigns; but no change or division in ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations of or diminish the rights of lessee. No sale or assignment by lessors shall

be binding on lessee unless lessee shall be furnished with a certified copy of recorded instrument evidencing same. The lessee shall not sell or assign this lease without the consent of lessors, except that without lessors' consent lessee may assign the same as a whole to any of its associated or subsidiary companies or to its successor in business.

8. No obligation reasonably to develop the leased premises shall arise during the twenty year term hereof unless oil and/or gas is produced in paying quantities therefrom. After the discovery of oil and/or gas on said premises in paying quantities the lessee agrees reasonable to develop the producing structure, that is, lessee agrees to develop the same to the extent that a reasonably prudent operator would develop it under the same or similar circumstances. In the event of termination of this lease for any cause lessee shall have the right to retain, under the terms of the lease, each well then being worked on and/or being drilled and/or producing oil or gas and twenty-acres surrounding same, to be selected by lessee in as nearly a square form as possible.

9. Lessors hereby warrant and agree to defend the title to said land and agree that lessee at its option may discharge any tax, mortgage or other lien upon said land and in event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply royalties accruing hereunder toward satisfying same. Without impairment of lessee's right under the warranty in event of failure of title, it is agreed that if lessors own an interest in said land less than the estate conveyed herein, then the royalties to be paid lessors shall be reduced proportionately.

In Witness Whereof, this instrument is executed on the date first above written.

Caesar Kleberg,
Richard King,
Independent Executors and Trustees under the will of Mrs. Henrietta M. King deceased,

Richard M. Kleberg,
Jno. D. Finnegan,
Samuel G. Ragland,
Robt. J. Kleberg, Jr.,
Trustees under the will of Mrs. Henrietta M. King, deceased,

Alice G. K. Kleberg,
Individually and as Independent Executrix of the estate of Robert J. Kleberg, Sr., deceased,

Richard M. Kleberg,
Robert J. Kleberg, Jr.,
Advisory Executors of the Estate of Robert J. Kleberg, Sr., deceased, Lessors,

Humble Oil & Refining Company,
By Wallace E. Pratt,
Vice President, Lessee.

Attest:

.....,
Secretary.

Acknowledged by Caesar Kleberg, Richard King, Robert J. Kleberg, Jr., John D. Finnegan, Samuel G. Ragland, Richard Mifflin Kleberg, and Alice G. K. Kleberg in the capacities above stated, on September 27, 1933, before G. Fromme, Notary Public, Kleberg County, Texas.

Acknowledged by Wallace E. Pratt, in the capacity above stated, on Sept. 26, 1933, before Fritz Kappenberger, Notary Public in and for Harris County, Texas.

EXHIBIT B

14,034 Acres—San Juan de Carricitos Grant, Willacy County, Texas.

Period	Barrels of Oil Extracted		Value After Taxes	
1944, June	1,569.93		1,478.05	
July	4,778.58		4,498.91	
August	4,441.85		4,181.88	
September	4,419.49		4,160.84	
October	6,871.43		6,469.28	
November	7,856.07		7,517.28	
December	10,568.59	40,505.94	10,112.82	38,419.06
1945, January	7,012.60		6,710.18	
February	6,000.88		5,742.09	
March	10,862.41		10,393.97	
April	15,825.16		15,142.70	
May	20,404.43		19,524.49	
June	20,179.92		19,309.66	
June-Oil Sold	42.25		40.43	
July	25,820.38		24,706.88	
August	36,277.13		34,712.69	
September	24,017.42		22,981.67	
October	13,387.55		12,810.21	
November	36,399.97		34,830.22	
December	53,161.88	269,391.98	50,869.27	257,774.46

Period	Barrels of Oil Extracted		Value After Taxes	
1946, January	85,193.19		81,519.23	
February	107,914.46		103,260.65	
March	84,047.94		80,423.37	
April	95,416.82		100,450.07	
May	113,287.46		119,263.37	
June	136,452.37		143,650.24	
July	147,201.73		163,477.95	
August	143,697.73		185,720.33	
September	135,450.15		175,060.84	
October	134,157.15		173,389.74	
November	145,148.65		194,965.49	
December	131,382.18	1,459,349.83	194,995.79	1,716,177.07
1947,				
January	124,790.72		185,212.83	
February	121,833.33		180,823.51	
March	160,172.35		265,556.38	
April	162,406.24		279,968.08	
May	174,932.09		301,561.06	
June	175,002.56		301,682.55	
July	128,475.93		221,476.45	
August	124,907.36		215,324.67	
September	125,201.95		215,832.52	
October	148,686.86		272,477.85	
November	145,603.19		278,921.11	
December	150,408.38	1,742,420.96	348,904.75	3,067,741.76
1948,				
January	149,761.51		358,678.83	
February	140,215.54		335,816.22	
March	150,609.41		360,709.86	
April	144,248.32		345,475.06	
May	148,489.22		355,632.00	

Period	Barrels of Oil Extracted		Value After Taxes	
June	144,476.43		346,021.45	
July	119,926.33		287,223.88	
August	117,846.47		282,242.60	
September	113,147.61		270,988.85	
October	117,529.76		281,484.17	
November	113,205.27		271,127.04	
December	116,216.19	1,575,672.06	278,338.18	3,773,738.14
1949,				
January	105,106.28		251,729.95	
February	91,262.30		218,573.53	
March	92,851.64		222,380.02	
April	76,278.11		182,686.39	
May	78,060.19		186,954.44	
June	73,654.25		176,402.15	
July	69,325.75		166,035.41	
August	68,246.35		163,450.21	
September	74,558.82		178,568.62	
October	79,169.12		189,610.23	
November	85,323.52		204,350.10	
December	78,633.52	972,469.85	188,327.54	2,329,068.59
1950,				
January	75,739.02		181,395.20	
February	66,411.23		159,055.15	
March	76,847.83		183,323.09	
April	78,131.19		186,318.68	
May	81,757.85		194,967.26	
June	86,147.01		205,434.01	
July	94,781.02		226,023.42	
August	97,238.58		222,600.96	
September	101,031.95		231,284.93	

Period	Barrels of Oil Extracted		Value After Taxes	
October	56,035.79		128,278.54	
November	57,308.65		131,192.38	
December	62,051.02	933,481.14	142,048.78	2,191,922.40
1951, January	60,979.37		139,595.48	
February	56,946.63		130,363.61	
March	57,974.97		132,717.70	
April	58,209.42		133,254.46	
May	61,020.93		139,690.57	
June	58,657.54		134,280.31	
July	60,931.64		139,486.28	
August	120,630.42		276,264.64	
September	123,099.83		281,631.63	
October	133,642.35		305,736.91	
November	121,366.58		277,653.39	
December	119,052.33	1,032,562.01	272,358.92	2,363,033.90
1952,				
January	117,195.24		268,110.47	
February	112,946.73		258,390.99	
March	121,131.42		277,115.35	
April	108,696.75		248,668.27	
May	106,932.65		244,632.40	
June	99,233.59		227,019.22	
July	94,275.30		215,675.93	
August	103,459.65		236,687.28	
September	119,772.36		274,006.26	
October	120,796.74		276,349.66	
November	118,971.77		272,174.75	
December	125,688.56	1,349,100.76	287,540.82	3,086,371.40

Period	Barrels of Oil Extracted		Value After Taxes		
1953, January	116,958.56		267,568.95		
February	104,765.19		239,673.92		
March	104,814.01		239,785.64		
April	95,843.19		219,262.88		
May	102,843.51		235,277.70		
June	100,625.01		245,015.71		
July	105,305.01		271,047.38		
August	105,517.71		271,594.65		
September	95,985.99	932,658.18	247,060.80		2,236,287.63
Total—		10,307,612.71 barrels		$21,060,534.41	
Aug. 1951 through May 1952 (Willamar Pressure Maintenance Plant)		551.69		1,259.79	
June through August (1952) (Willamar Pressure Maintenance Plant)		230.47		527.68	
September (1952) (Willamar Pressure Maintenance Plant)		140.94		322.69	
October (1952) (Willamar Pressure Maintenance Plant)		74.47		170.50	
July (April) (1953) (Willamar Pressure Maintenance Plant)		90.39	1,087.96	206.97	2,487.63
			10,308,700.67 barrels		$21,063,022.04

EXHIBIT C

14,034 Acres—San Juan De Carricitos Grant, Willacy County, Texas

Period	MCF of Gas Extracted		Value After Taxes	
June, 1945	928		$ 26.39	
July	1,124		31.97	
August	936		26.62	
September	931		16.03	
October	531		15.10	
November	531		15.10	
December	727	5,708	20.68	$ 151.89
January, 1946	611		23.17	
February	718		27.23	
March	1,225		144.25	
April	2,860		108.45	
May	769		29.16	
June	861		32.65	
July	1,874		71.06	
August	3,543		138.33	
September	4,079		154.68	
October	3,219		122.06	
November	871		33.03	
December	994	21,624	37.69	921.76
January, 1947	981		37.20	
February	888		33.67	
March	963		36.52	
April	1,953		74.06	
May	4,827		183.04	
June	4,849		183.84	
July	3,710		140.68	
August	5,501		208.60	

Period	MCF of Gas Extracted		Value After Taxes	
September	4,670		177.09	
October	3,797		143.98	
November	961		40.25	
December	993	34,093	41.41	1,300.34
January, 1948	540		20.48	
February	928		35.19	
March	1,054		46.91	
April	1,003		43.44	
May	1,056		47.21	
June	993		42.45	
July	914		36.99	
August	906		36.51	
September	894		36.06	
October	936		37.88	
November	913		36.89	
December	914	11,051	49.45	469.46
January, 1949	906		48.37	
February	871		46.39	
March	814		43.34	
April	754		40.30	
May	764		40.90	
June	718		38.41	
July	712		37.81	
August	724		38.56	
September	737		39.37	
October	4,762		219.42	
November	4,129		190.34	
December	3,422	19,313	157.82	$ 941.03
January, 1950	3,832		176.59	
February	2,748		126.67	

Period	MCF of Gas Extracted		Value After Taxes	
March	3,428		157.71	
April	3,781		173.25	
May	3,896		180.10	
June	3,841		177.55	
July	3,679		170.57	
August	5,564		256.49	
September	8,986		412.41	
October	43,070		274.86	
November	34,219		28.60	
December	36,262	153,306	57.33	2,192.13
January, 1951	43,248		60.02	
February	42,040		240.43	
March	44,111		35.70	
April	38,705		43.03	
May	37,537		36.80	
June	42,694		46.92	
July	46,981		50.68	
August	61,917		62.70	
September	35,330		64.41	
October	48,032		67.12	
November	48,646		59.20	
December	61,762	551,003	65.60	832.61
January, 1952	51,878		87.77	
February	41,762		335.45	
March	55,030		271.62	
April	39,906		216.18	
May	137,063		123.32	
June	126,161		121.72	
July	130,874		119.64	
August	141,762		119.74	
September	153,801		125.02	

Period	MCF of Gas Extracted		Value After Taxes	
October	212,228		320.93	
November	184,047		288.59	
December	198,978	1,473,490	86.74	2,216.72
January, 1953	196,500		107.57	
February	164,363		97.86	
March	176,010		91.26	
April	162,580		82.97	
May	171,224		70.99	
June	167,271		77.78	
July	162,008		76.74	
August	170,119	1,370,075	91.57	696.74
		3,639,663		$9,722.68

EXHIBIT D

Gonzales and Ramirez Surveys, in Jim Hogg County, Texas

Period	Barrels of Oil Extracted		Value After Taxes	
1939				
June	3,448.37		3,347.07	
July	4,479.54		3,899.99	
August	3,369.66		2,384.26	
September	4,995.36		3,999.41	
September	1,693.09		2,022.06	
October	4,573.94		5,685.06	
November	4,633.76		5,759.41	
December	4,607.47	31,801.19	5,726.74	32,824.00
1940				
January	5,736.73		7,130.32	
February	5,831.41		7,248.05	
March	14,475.84		17,992.39	

Period	Barrels of Oil Extracted		Value After Taxes	
April	15,421.22		19,167.43	
May	13,568.79		16,865.00	
June	14,542.19		18,074.84	
July	14,241.50		17,701.12	
August	15,815.82		19,657.88	
September	15,967.26		19,846.10	
October	17,872.87		22,214.64	
November	18,327.45		22,779.65	
December	9,854.46	161,655.54	12,248.35	200,925.77
1941				
January	10,589.64		13,162.12	
February	10,574.71		13,143.56	
March	12,458.60		15,573.46	
April	12,737.98		16,699.49	
May	15,016.89		20,013.09	
June	13,548.63		18,808.90	
July	13,446.22		18,667.55	
August	14,166.88		19,668.05	
September	13,511.27		18,757.86	
October	14,019.34		19,463.23	
November	15,160.31		21,047.24	
December	15,073.62	160,303.49	20,926.89	215,931.44
1942				
January	14,630.59		20,311.84	
February	12,160.81		16,883.00	
March	6,737.19		9,353.32	
April	3,482.32		4,834.55	
May	4,424.73		6,142.91	
June	1,226.23		1,702.40	
July	935.56		1,298.85	
August	926.60		1,286.41	

Period	Barrels of Oil Extracted		Value After Taxes	
September	929.99		1,291.12	
October	1,591.94		2,210.12	
November	1,733.45		2,406.57	
December	1,823.15	50,602.56	2,531.10	70,252.19
1943				
January	1,730.87		2,402.98	
February	1,248.07		1,732.71	
March	1,842.79		2,558.36	
April	3,580.44		4,970.77	
May	5,036.14		6,991.75	
June	3,673.69		5,100.24	
July	4,962.66		6,889.73	
August	8,862.37		12,303.73	
September	7,923.76		11,000.65	
October	8,857.75		12,297.33	
November	8,940.90		12,412.77	
December	8,815.97	65,475.41	12,239.32	90,900.34
1944				
January	9,428.80		13,090.12	
February	8,423.82		11,694.90	
March	9,192.09		12,761.49	
April	9,465.10		13,140.52	
May	7,169.91		9,954.08	
June	6,775.96		9,407.14	
July	7,185.17		9,975.26	
August	6,977.91		9,687.52	
September	7,171.27		9,955.96	
October	6,520.35		9,052.27	
November	7,812.06		10,845.57	
December	6,873.87	92,996.31	9,543.08	129,107.91

Period	Barrels of Oil Extracted		Value After Taxes	
1945				
January	6,896.70		9,574.78	
February	6,581.32		9,136.92	
March	7,419.09		10,300.02	
April	6,600.59		9,163.67	
May	6,674.17		9,265.83	
June	6,626.81		9,200.07	
July	7,387.19		10,255.72	
August	7,022.14		9,748.92	
September	5,738.75		7,967.18	
October	5,764.19		8,002.50	
November	6,633.45		9,209.30	
December	7,187.36	80,531.76	9,978.31	111,803.22
1946				
January	7,194.63		9,988.39	
February	6,455.82		8,962.71	
March	6,082.15		8,443.93	
April	6,745.11		10,011.00	
May	7,239.76		10,745.17	
June	7,226.91		10,726.10	
July	7,586.34		11,616.50	
August	7,228.76		12,461.48	
September	6,646.84		11,458.32	
October	6,646.70		11,458.08	
November	13,859.37		24,642.60	
December	13,639.37	96,551.76	24,820.24	155,334.52
1947				
January	12,392.26		22,550.82	
February	11,550.03		21,018.16	
March	12,682.29		25,246.90	
April	12,375.61		25,486.80	

Period	Barrels of Oil Extracted		Value After Taxes	
May	12,987.54		26,747.02	
June	11,805.19		24,312.07	
July	12,080.79		24,879.63	
August	12,385.94		25,508.08	
September	11,621.32		23,933.37	
October	11,886.83		26,503.01	
November	10,856.24		25,480.27	
December	11,195.28	143,819.32	30,769.79	302,435.92
1948				
January	10,800.11		30,525.84	
February	9,263.87		26,183.75	
March	9,767.69		27,607.77	
April	10,486.24		29,638.70	
May	10,125.06		28,617.87	
June	9,386.21		26,529.54	
July	10,048.28		28,400.84	
August	8,711.57		24,622.72	
September	8,874.63		25,083.59	
October	7,834.30		22,143.18	
November	8,044.68		22,737.80	
December	7,674.70	111,017.34	21,692.06	313,783.66
1949				
January	6,968.46		19,695.93	
February	5,231.55		14,786.63	
March	5,707.96		16,133.18	
April	4,778.27		13,505.50	
May	4,526.69		12,794.42	
June	5,312.61		15,015.75	
July	4,794.15		13,550.38	
August	5,685.26		16,069.03	
September	5,013.44		14,170.20	

Period	Barrels of Oil Extracted		Value After Taxes	
October	5,730.32		16,196.43	
November	5,354.52		15,134.21	
December	4,774.01	63,877.24	13,493.45	180,545.11
1950				
January	4,800.23		13,567.56	
February	5,351.70		15,126.26	
March	5,303.90		14,935.82	
April	4,896.50		13,780.07	
May	6,310.81		17,760.31	
June	5,323.02		14,980.40	
July	5,251.03		14,777.82	
August	5,849.20		16,461.22	
September	4,491.33		12,639.79	
October	5,601.18		15,763.21	
November	5,483.57		15,432.25	
December	4,083.90	62,746.37	11,493.20	176,717.91
1951				
January	4,973.47		13,996.68	
February	3,972.71		11,180.29	
March	5,009.50		14,098.09	
April	4,445.62		12,511.19	
May	3,576.63		10,065.60	
June	2,636.98		7,421.18	
July	3,579.11		10,072.60	
August	3,094.77		8,709.51	
September	3,619.18		10,180.97	
October	4,053.55		11,400.32	
November	3,616.16		10,170.19	
December	3,662.25	46,239.93	10,299.79	130,106.41

Period	Barrels of Oil Extracted		Value After Taxes	
1952				
January	2,709.15		7,619.27	
February	3,520.29		9,900.54	
March	3,653.62		10,275.52	
April	1,857.50		5,224.08	
May	3,193.26		8,980.82	
June	2,696.96		7,585.00	
July	3,595.51		10,112.11	
August	3,058.68		8,602.32	
September	4,012.91		11,286.02	
October	4,089.48		11,501.35	
November	3,141.72		8,835.85	
December	5,611.71	39,140.79	10,157.66	110,080.54
1953				
January	3,108.71		8,743.02	
February	3,596.89		10,115.99	
March	4,080.42		11,475.88	
April	3,524.35		9,911.98	
May	3,629.49		10,207.68	
June	3,630.57		10,738.02	
July	3,639.05		11,276.07	
August	4,947.46		15,330.34	
September	4,942.54	35,099.48	15,315.09	103,114.07
Total—		1,241,858.49 barrels		$2,323,863.01

EXHIBIT E

S. H. Bell Property—Willacy County, Texas.

Period	MCF of Gas Extracted		Value After Taxes	
August, 1951 to March, 1952	1,145		92.11	
April	180		16.97	
May	186		17.54	
June	180		16.97	
July	124		11.69	
August	109		10.28	
September	120		11.31	
October	170		16.03	
November	120		11.31	
December	186	2,520	17.54	$ 221.75
January, 1953	188		17.72	
February	149		14.05	
March	149		14.05	
April	177		16.69	
May	171		16.12	
June	8,226		775.55	
July	8,594		810.24	
August	None	17,654	None	$1,664.42
		20,174		$1,886.17

EXHIBIT F

S. H. Bell "B" Property—Willacy County, Texas.

Period	MCF of Gas Extracted		Value After Taxes	
August, 1951 to February, 1952	17,392		$ 1,285.03	
March	2,552		240.60	
April	2,332		219.86	
May	2,093		197.33	
June	2,161		203.74	
July	2,152		202.89	
August	1,995		188.09	
September	1,804		170.08	
October	1,945		183.37	
November	1,914		180.45	
December	1,875	38,215	176.77	$ 3,248.21
January, 1953	1,921		181.11	
February	1,710		161.22	
March	2,024		190.82	
April	1,311		123.60	
May	1,098		103.52	
June	2,244		211.56	
July	2,287		215.62	
August	1,371	13,966	142.18	$1,329.63
		52,181		$4,577.84

EXHIBIT G

S. H. Bell Property—Willacy County, Texas.

Period	Barrels of Oil Extracted		Value After Taxes	
1949				
February	423.63		1,014.60	
March	429.21		1,027.96	
April	364.15		872.14	
May through August	NO RUNS			
September	371.27		889.20	
October	665.36		1,593.53	
November	719.48		1,723.16	
December	621.69	3,594.79	1,488.95	$ 8,609.54
1950				
January	395.15		946.39	
February	730.44		1,749.40	
March	394.49		942.46	
April	390.54		931.32	
May	753.30		1,796.38	
June	388.62		926.74	
July	707.75		1,687.77	
August	367.35		840.94	
September	362.83		830.60	
October	395.89		906.29	
November	403.47		923.64	
December	787.07	6,076.90	1,801.78	14,283.71
1951				
January	440.82		1,009.14	
February	433.02		991.28	
March	384.20		879.52	

Period	Barrels of Oil Extracted		Value After Taxes	
April	430.00		984.37	
May	812.02		1,858.90	
June	NO RUNS			
July	398.95		913.06	
August	401.94		920.14	
September	426.94		977.60	
October	755.66		1,728.75	
November	338.27		773.87	
December	427.73	5,249.55	978.53	12,015.16
1952				
January	416.61		953.09	
February	369.93		846.30	
March	NO RUNS			
April	383.33		876.95	
May	343.96		786.88	
Aug. 1951 through May 1952	6.00		13.48	
June	616.68		1,410.79	
July	380.10		869.56	
June through August	1.62		3.72	
August	NO RUNS			
September	390.50		893.36	
September	2.50		5.72	
October	NO RUNS			
October	1.09		2.50	
November	426.95		976.74	
December	165.80	3,505.07	379.31	8,018.40
1953				
January	656.38		1,501.62	
February	415.83		951.30	
March	243.65		557.40	

Period	Barrels of Oil Extracted		Value After Taxes	
April	NO RUNS			
April	.53		1.20	
May	693.26		1,586.00	
June	518.99		1,335.85	
July	767.12		1,974.51	
August	NO RUNS			
September	NO RUNS	3,295.76		7,907.88
		21,722.07 barrels		$50,834.69

EXHIBIT H

S. H. Bell "B" Property—Willacy County, Texas

Period	Barrels of Oil Extracted		Value After Taxes	
1950				
Nov. 30	472.07		$ 1,080.68	
December	941.84	1,413.91	2,156.08	3,236.76
1951				
January	469.06		1,073.78	
February	931.46		2,132.33	
March	1,315.26		3,010.93	
April	1,387.88		3,177.17	
May	1,330.12		3,044.95	
June	878.39		2,010.84	
July	1,353.58		3,098.65	
August	2,766.88		6,334.01	
September	2,093.58		4,789.78	
October	2,941.36		6,729.02	
November	2,383.74		5,453.35	
December	2,684.27	20,535.58	6,140.86	46,995.67

Period	Barrels of Oil Extracted		Value After Taxes	
1952				
January	2,073.12		4,742.73	
February	2,238.76		5,121.68	
March	2,583.10		5,909.42	
April	2,578.55		5,899.01	
May	2,167.89		4,959.53	
Aug. 1951 through May 1952	4.79		10.98	
June	1,803.84		4,126.69	
July	2,146.11		4,909.71	
June through Aug. 1952	2.34		5.35	
August	1,761.11		4,028.94	
September	2,637.73		6,034.38	
September	1.04		2.39	
October	.53		1.22	
October	2,236.47		5,116.43	
November	2,717.66		6,217.23	
December	2,231.42	27,184.46	5,104.88	62,190.57
1953				
January	2,253.55		5,155.49	
February	2,182.92		4,993.93	
March	2,224.43		5,088.88	
April	1,821.33		4,166.71	
April	.59		1.36	
May	2,141.18		4,898.45	
June	2,124.82		5,221.77	
July	2,159.09		5,557.33	
August	2,101.85		5,409.99	
September	2,173.22	19,182.98	5,593.72	46,087.63
Total—		68,316.93 barrels		$158,510.63

EXHIBIT I

"July 2, 1953

"Mr. Thomas Hart Fisher
"135 South LaSalle Street
"Chicago 3, Illinois

"Dear Tom:

"Now that the issue between you, your clients and Humble has been resolved to one of accounting only, it appears to me that little is to be gained by effectuating that end in the court room.

"Humble has always been and is now ready, able and willing, *and I might say anxious*, to account for and pay to you and the Atwoods the entire amount of money due under the lease held by it for oil from the properties involved.

"That can be accomplished in my office as well, if not better, than in the Courthouse at Raymondville.

"If you are inclined toward such an amicable disposition of the matter, I will appreciate hearing from you, and, in the meantime, will be glad to obtain a check for *immediate delivery* to you covering *all* monies now accrued to the credit of the Atwood account.

"May I have an expression from you of your present thinking along these lines?

"Regards and best wishes.

"Yours truly,
"FELIX A. RAYMER"

EXHIBIT J

The State of Texas
County of Harris

WHEREAS, under the provisions contained in that certain oil, gas and mineral lease dated September 26, 1933, executed by the Executors and Trustees of the Estate of Henrietta M. King, et al, as lessors, to Humble Oil & Refining Company, as lessee, covering 971,711.43 acres of land, more or less, it is provided that lessee shall promptly

designate and define, in writing, at the expiration of twenty (20) years from the date of said lease, the area or areas on which oil, gas and or other minerals are then being produced; and

WHEREAS, the term of said lease and the time for said designation of producing areas has heretofore been extended as to the land covered by said lease except as to the part thereof which was conveyed by the Executors and Trustees of the Estate of Henrietta M. King to Edwin B. Atwood, Alice B. Atwood and Richard W. Atwood (herein called "Atwoods") by partition deed dated March 30, 1935; and

WHEREAS, Humble Oil & Refining Company, as the present owner and holder of said lease, has determined, in accordance with the provisions of said lease, and in accordance with the methods and procedure therein authorized and provided for, that the areas hereinafter described, and comprising a part of the land partitioned to the said Atwoods, are now producing and are productive of oil, gas and other minerals:

NOW, THEREFORE, in accordance with the terms and provisions of said lease, Humble Oil & Refining Company, acting herein by its Vice President thereunto duly authorized, does here and now designate and define the following areas, out of the lands partitioned to the Atwoods by said partition deed, to be producing oil, gas or other minerals or to be included within geologic structures or formations proven to be productive of oil, gas or other minerals, to-wit:

AREA NO. 1

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, situated in San Juan de Carricitos Grant, Willacy and Kenedy Counties, Texas, being a portion of

the Sauz Ranch covered by said lease and being more specifically described by metes and bounds as follows:

BEGINNING at the occupied northeast corner of Share 13 of the partition suit of San Juan de Carricitos Grant by the District Court of Cameron County, Texas, styled "Richard King vs. The Heirs and Assigns of Narciso Cavazos, Deceased" for an inner corner of the Sauz Ranch and also of this tract;

THENCE S 89° 49′ W, with the occupied north line of said Share 13 a distance of 10,560 feet to an angle point in said line;

THENCE S 89° 13′ W, continuing with said occupied north line, a distance of 7,669.9 feet to the northwest corner of said Share 13 as occupied for a southwest corner of this tract;

THENCE N 0° 09′ W, with the occupied west line of the Sauz Ranch, a distance of 17,000 feet to a point in fence line for a corner of this tract;

THENCE N 32° 22′ E, a distance of 25,800 feet to the northwest fence corner of the Magotes Ranch trap for a corner of this tract;

THENCE East a distance of 2998.3 feet to a point which is south 400′ feet and east 1200 feet from the northeast fence corner of the Magotes Ranch Trap for an inner corner of this tract;

THENCE North, a distance of 26,550 feet to a point in the occupied division line between the Sauz Ranch and the Norias Division of the King Ranch, for the northwest corner of this tract;

THENCE N 89° 20′ E following the recognized division line, a distance of 30,900 feet to a point in said line, which is 2,700 feet west of the westerly shore line of Laguna Madre, for the northeast corner of this tract;

THENCE S 48° 05' W a distance of 42,142.4 feet to a point in the center line of Farm to Market Road No. 497, said point being East a distance of 1050 feet from the occupied southwest corner of the Sausal Trap, for an angle point in the east line of this tract;

THENCE South a distance of 49,000 feet to a point in the occupied south line of the Sauz Ranch for the southeast corner of this tract;

THENCE S 89° 16' W with the occupied south line of the Sauz Ranch, a distance of 6250 feet to a point in the occupied east line of Share 3 of said partition suit for a corner of this tract;

THENCE N 0° 11' E with the occupied east line of said Share 3 a distance of 2515 feet to the occupied northeast corner of said Share for a corner of this tract;

THENCE N 89° 08' W, with the occupied north line of said Share 3, a distance of 1847 feet to an occupied corner of the Sauz Ranch for a corner of this tract;

THENCE N 0° 11' W with an occupied west line of the Sauz Ranch, a distance of 9973 feet to an occupied corner of the Sauz Ranch in the north line of Share 7 of said partition suit for a corner of this tract;

THENCE N 89° 09' W, with the occupied north line of said Share 7, a distance of 8057 feet to the occupied southeast corner of said Share 13 for a corner of this tract;

THENCE N 0° 16' E, with the occupied east line of said Share 13, a distance of 10,943 feet to the place of beginning and containing 50,476.6 acres of land, more or less.

AREA NO. 2

ALL THAT CERTAIN PARCEL OR TRACT OF LAND situated in Jim Hogg County, Texas, being more particularly described as follows:

The Northwest 1/4 of A. R. Gonzales Survey #104, Abstract #137; and

The West 1/2 of L. Ramirez Survey #36, Abstract # 259.

And a map or plat of each above described area is attached hereto and made a part hereof for all purposes.

It is not the intent of Humble Oil & Refining Company by this instrument to make a designation of any producing area as to any part or portion of the lands covered by the aforesaid lease other than that part of the lands covered thereby which were partitioned to the Atwoods, and nothing herein contained shall be construed as a designation of producing areas under the provisions of said lease as to the other land covered by said lease as to which land the term of said lease and the time for designation of producing areas has heretofore been extended.

EXECUTED in twenty originals this 22 day of September, 1953.

HUMBLE OIL & REFINING COMPANY
By Morgan J. Davis
Vice President
Trade O.K.
W. A. Maley
By W. H. M.
Form O.K.
WW

ATTEST:
Elizabeth H. Kenney
Asst. Secretary
(SEAL)

The State of Texas }
County of Harris }

BEFORE ME, the undersigned authority, on this day personally appeared Morgan J. Davis known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of HUMBLE OIL & REFINING COMPANY and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said Humble Oil & Refining Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22 day of September, A. D., 1953.

Wayne Lehew
Notary Public in and for
Harris County, Texas.

(SEAL)
My Commission Expires June 1, 1955

EXHIBIT K

#133885 DESIGNATION INSTRUMENT
HUMBLE OIL & REFINING CO. TO PUBLIC

The State of Texas }
County of Harris }

WHEREAS, under the provisions contained in that certain oil, gas and mineral lease dated September 26, 1933, executed by the Executors and Trustees of the Estate of Henrietta M. King, et al, as lessors, to Humble Oil & Refining Company, as lessee, covering 971,711.43 acres of land, more or less, it is provided that lessee shall promptly designate and define, in writing, at the expiration of twenty (20) years from the date of said lease, the area or areas on which oil, gas and or other minerals are then being produced; and

WHEREAS, the term of said lease and the time for said designation of producing areas has heretofore been extended as to the land covered by said lease except as to the part thereof which was conveyed by the Executors and Trustees of the Estate of Henrietta M. King to Edwin B. Atwood, Alice B. Atwood and Richard W. Atwood (herein called "Atwoods") by partition deed dated March 30, 1935; and

WHEREAS, by instrument dated September 22, 1953, Humble Oil & Refining Company did designate and define in writing two (2) certain areas, out of the lands partitioned to the Atwoods by said partition deed, to be producing oil, gas or other minerals or to be included within geologic structures or formations proven to be productive of oil, gas or other minerals; and

WHEREAS, the hereinafter described tract of land which is covered by said lease and which was partitioned to the Atwoods overlies the same geologic structure or formation proven to be productive of oil, gas or other minerals which was designated as underlying "Area No. 1" in said designation instrument:

NOW, THEREFORE, in accordance with the terms and provisions of said lease and in order to describe all the lands partitioned to the Atwoods as aforesaid which overlie the geologic structure or formation proven to be productive of oil, gas or other minerals which was heretofore designated as underlying said "Area No. 1," Humble Oil & Refining Company, acting herein by its Vice President thereunto duly authorized, does here and now designate in addition to the land described in said designation instrument dated September 22, 1953, the following described tract of land to be producing oil, gas or other mineral or to be included within geologic structures or formations proven to be productive of oil, gas or other minerals, to-wit:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, situated in the San Juan de Carricitos Grant, Willacy County, Texas, and being more specifically described by metes and bounds as follows:

COMMENCING at the occupied northeast corner of Share 13 of the partition suit of San Juan de Carricitos Grant by the District Court of Cameron County, Texas, styled 'Richard King *vs.* The Heirs and Assigns of Narcisco Cavazos, Deceased,'' and running from this point S 89° 49′ W along the occupied north line of said Share 13 a distance of 2,993 ft. to the beginning point of the tract herein described, a 1½″ iron pipe at fence corner,

THENCE S 89° 49′ W with the occupied north line of said Share 13 a distance of 1,957 ft. to the most northerly northwest corner of the tract herein described, a 1'' iron pipe at fence corner;

Thence S 1° 40′ W with the occupied west line of the Bell Estate Tract a distance of 5,441.6 ft. to a division line of said Share 13;

THENCE S 89° 33′ W with said division line a distance of 1,561 ft. to a point in said line;

THENCE with the occupied west line of the Bell Estate Tract S 0° 10′ W a distance of 5,387 ft. to the south line of said Share 13;

THENCE S 89° 20′ E with the occupied south line of said share 13 a distance of 2,586.8 ft. to the most southerly southeast corner of the tract herein described;

THENCE N 0° 16′ E with the occupied east line of the Bell Estate Tract a distance of 5,438 ft. to a division line of said Share 13;

THENCE N 89° 33′ E with said division line 983.1 ft. to a point in said line;

THENCE with the occupied east line of the Bell Estate Tract N 1° 02′ E a distance of 5,428.4 ft. to the place of beginning of the tract herein described, said tract containing a total of 569.8 acres.

EXECUTED this 29th day of October, 1953.

HUMBLE OIL & REFINING COMPANY
By Morgan J. Davis
Vice President

Trade O.K.
W. A. Maley
By J. B. W.
Form O.K.
WW

ATTEST:
Elizabeth H. Kenney
Asst. Secretary
(SEAL)

The State of Texas }
County of Harris }

BEFORE ME, the undersigned authority, on this day personally appeared Morgan J. Davis known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of HUMBLE OIL & REFINING COMPANY and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said Humble Oil & Refining Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of October, A. D., 1953.

Gladys Jean Coats
Notary Public in and for
Harris County, Texas.

My Commission Expires June 1, 1955
(SEAL)

Filed for record Oct. 30, 1953 at 3:05 o'clock P.M. and duly recorded Oct. 30, 1953 at 4:20 o'clock P.M. W. F. Brownfield, County Clerk, Willacy County, Texas. By Odilia Gomez, Deputy.

The State of Texas
County of Willacy

I, W. F. BROWNFIELD, Clerk, County Court, Willacy County, Texas, do hereby certify that the foregoing is a true, full and correct copy of DESIGNATION INSTRUMENT Styled: HUMBLE OIL & REFINING CO. TO THE PUBLIC, under Clerk's File No. 133885, recorded in my office on the 30 day of October, 1953, in Volume 48, Pages 487-488 of the Misc. Deed Records of said County.

WITNESS my hand and seal of office at office in Raymondville, Texas, this 22 day of March, 1954.

W. F. BROWNFIELD,
County Clerk,
Willacy County, Texas.
By Odilia Gomez,
Deputy.

(SEAL)

EXHIBIT L.

(Non-exploration Contract Between King Estate and Humble Oil & Refining Co., Dated Sept. 26, 1933.)

HUMBLE OIL AND REFINING COMPANY

Geologic, Lease and Scouting Department
Houston, Texas

September 26th, 1933

Wallace E. Pratt,
Vice President
L. T. Barrow,
Chief Geologist
D. P. Carlton,
Geo-Physical Exploration
R. B. Cooper,
Leases
L. V. Maury,
Titles and Records
J. V. Boyce,
Scouting

Please address your reply to
Post-Office Box 2180,
Houston, Texas

Estate of Mrs. Henrietta M. King, deceased,
Kingsville, Texas.
Gentlemen:

Of even date with this letter we have secured from the Estate of Mrs. Henrietta M. King, deceased, and from the Estate of Robert J. Kleberg Sr., deceased, and from Mrs. Alice G. K. Kleberg individually, an oil and gas mineral lease covering 971,711.43 acres of land in southwest Texas, being most of what is known as the King Ranch; another lease executed by Robert J. Kleberg Jr., individually, and

as trustee, covering some 131,005.59 acres of land in Brooks, Kenedy and Hidalgo Counties, Texas, and another lease executed by Mrs. Alice G. K. Kleberg covering approximately 30,439.23 acres of land in Kleberg County, Texas and Jim Wells County, Texas, to which leases reference is here made for all purposes.

It is our understanding that no exploratory work is to be required under said leases during the first five (5) years from this date; but during the 20-year primary term of said leases Humble Oil & Refining Company is to explore the leased area as adequately as it can by its geophysical and geologic technique. It is further understood that no exploratory work by drilling is required of Humble Oil & Refining Company except to drill such offset wells as may be implied from the terms of the leases.

In the event oil and or gas should be discovered in paying quantities on the leased premises, we agree to develop the productive structure with reasonable diligence as specified in the leases. We further agree subject to the orders, rules and regulations of the Railroad Commission of Texas and/or other lawful authority to produce from said leased premises currently approximately that portion of our total production in the State of Texas that we estimate the proven reserves on these leased premises are of our total proven reserves in the State of Texas from time to time.

Reference is also made for all purposes to a certain supplemental agreement of even date herewith between the Executors and Trustees of the Estate of Mrs. Henrietta M. King, deceased, and the Executors of the Estate of Robert J. Kleberg, Sr., deceased, on the one hand, and the Humble Oil & Refining Company on the other, with regard to a certain loan made simultaneously herewith by Humble Oil & Refining Company to said Henrietta M. King Es-

tate, and other matters; and further reference is made to a supplemental agreement of even date herewith between Mrs. Alice G. K. Kleberg and Robt. J. Kleberg, Jr., individually and as Trustee on the one hand and the Humble Oil & Refining Company on the other with respect to said loan and other matters. It is here agreed that at any time while said leases are in force, should substantially all the land covered thereby be brought or consolidated into one ownership, then, and in such event:

(a) All said leases shall be consolidated and shall be treated as one lease in developing and operating the properties covered thereby without reference to the boundary lines that may separate the several tracts included in the several leases;

(b) Also, the provisions contained in the said two agreements in reference to the retention of certain portions of the royalties by the Humble Oil & Refining Company as its own property during the second ten year period thereof, to-wit: one hundred twenty seven thousand eight hundred twenty four and 60/100 dollars ($127,824.60) in said agreement with said Estate, and twenty two thousand one hundred seventy five and 40/100 dollars ($22,175.40) in said agreement with Alice G. K. Kleberg and Robt. J. Kleberg, Jr., individually and as Trustee, shall also be treated as consolidated, so that the amount which it is entitled to retain shall be the total of said two sums, to-wit: one hundred fifty thousand dollars ($150,000.) per year, and the retention may be made out of the proceeds of any royalties derived from any part of said lands instead of the lands included in any particular lease.

We further understand that if and when the substantial portion of said lands shall become consolidated into one ownership you will see to it that the then owner will execute

and deliver to the Humble Oil & Refining Company such instrument or instruments in writing as may be necessary and appropriate in carrying into effect the provisions of the foregoing paragraph, such instrument or instruments to be executed with such formalities as will entitle them to recordation.

If this represents your understanding of the matter, please so indicate by signing one copy of this letter which is written in duplicate and return the signed copy to us for our files. You may retain one copy for your files.

Yours very truly,
Humble Oil & Refining Company
By Wallace E. Pratt
Vice-President

Accepted and agreed to:
Estate of Mrs. Henrietta M. King, Dec'd.
By Caesar Kleberg
Richard King
Independent Executors and Trustees
Richard M. Kleberg
Jno. D. Finnegan
Samuel G. Ragland
Robt. J. Kleberg, Jr.
Trustees
Alice G. K. Kleberg
Individually and as Independent
Executrix of the Estate of Robert
J. Kleberg, Sr., deceased
Richard M. Kleberg
Robt. J. Kleberg, Jr.
Advisory Executors of the Estate
of Robert J. Kleberg, Sr., Dec'd.
Robt. J. Kleberg, Jr.
Individually and as Trustee

EXHIBIT M

(Contract between King Estate and Humble Oil & Refining Co., Dated Sept. 26, 1933.)

This Agreement between Caesar Kleberg, Richard King, Independent Executors and Trustees under the will of Henrietta M. King, deceased, Robert J. Kleberg, Jr., Richard M. Kleberg, John D. Finnegan and Samuel G. Ragland, all Trustees under the will of Henrietta M. King, deceased, and Alice G. K. Kleberg, individually and as Independent Executrix of the Estate of Robert J. Kleberg, Sr., deceased, and Richard M. Kleberg and Robert J. Kleberg, Jr., as Advisory Executors of the Estate of Robert J. Kleberg, Sr., deceased, and the Humble Oil & Refining Company,

WITNESSETH:

1. The said Executors and Trustees of the Henrietta M. King Estate, joined by the Executrix and Advisory Executors of the Estate of Robert J. Kleberg, Sr., (with the joinder and consent of the said Alice G. K. Kleberg) agree to execute, and, therefore, simultaneously herewith have executed and delivered to the Humble Oil & Refining Company an oil, gas and mineral lease upon approximately *nine hundred seventy-one thousand seven hundred eleven and forty-three hundredths* (971,711.43) acres of land in the King Ranch in the State of Texas fully described in said lease, to which reference is made for all purposes.

2. The annual rental agreed upon for the twenty (20) year period of said lease is One Hundred Twenty-seven Thousand Eight Hundred Twenty-four and 60/100 ($127,824.60) Dollars, payable annually, although this is not expressed in the lease.

3. The Executors and Trustees of the Henrietta M. King Estate have simultaneously borrowed from the Hum-

ble Oil & Refining Company Two Million Seven Hundred Twenty-three Thousand Six Hundred Forty-five and 52/100 ($2,723,645.52) Dollars. The interest rate agreed upon this loan is five per cent (5%) per annum, although this is not expressed in the note.

4. However, instead of the Humble Oil & Refining Company paying said rent in cash, or the Executors and Trustees of the Henrietta M. King Estate paying said interest in cash, it is agreed that said rent shall be applied upon and offset against the said interest during said twenty (20) year period. It is agreed that thus offsetting the same for the twenty (20) year period will pay and discharge the said rent and will leave a total net amount to be repaid by the Executors and Trustees of the Henrietta M. King Estate of principal plus the balance of interest amounting to Three Million ($3,000,000.00) Dollars net cash by the executors and Trustees of the Henrietta M. King Estate to the Humble Oil & Refining Company at the expiration of twenty (20) years. However, it is agreed that the said sum shall be payable on or before, with the privilege of making partial payments at any time before maturity, and with the obligation of the Executors and Trustees of the Henrietta M. King Estate to pay the same at the rate of at least One Hundred Fifty Thousand ($150,000.00) Dollars each year of the second ten (10) years of said twenty (20) year period, and with the obligation to pay the balance on or before the expiration of twenty (20) years from this date. Therefore, in order to compensate the Executors and Trustees of the Henrietta M. King Estate for interest and rentals on such required or voluntary pre-payments as may be made before the expiration of the twentieth year from this date, the Humble Oil & Refining Company agrees to pay to the Executors and Trustees of the Henrietta M. King Estate, or order, at Kingsville, Texas, interest at the rate of five

(5%) per cent per annum, payable semi-annually as it accrues at semi-annual intervals corresponding with the interest-paying periods in said notes, upon each of such payments from the date when made until the expiration of twenty (20) years from this date.

5. Included in said lease and another lease to Humble Oil & Refining Company bearing even date therewith are seventy-six thousand two hundred twenty-seven (76,227) acres, more or less, situated in Jim Hogg and Starr Counties, Texas, previously leased to the Humble Oil & Refining Company by said lessors by lease dated January 16, 1933, recorded in Volume 72, pages 406 et seq. of the Deed Records of Starr County, Texas, and in Volume 14, pages 209 et seq. of the Lease Records of Jim Hogg County, Texas, here referred to for all purposes, and inasmuch as the Humble Oil & Refining Company has already paid Fifty-seven Thousand One Hundred Seventy and 25/100 ($57,170.25) Dollars for said lease, which payment would have continued said lease in effect until January 16, 1934, the pro-rate portion of said sum for the remainder of said first year of said original lease, amounting to ———— Dollars, is refunded to the Humble Oil & Refining Company by said lessors. Said original lease is superseded by the leases of this date mentioned above, and said original lease dated January 16, 1933, is, therefore, cancelled.

6. The agreement to repay said loan to the Humble Oil & Refining Company is further evidenced by a note of this date for Three Million ($3,000,000.00) Dollars executed by the said Executors and Trustees of the Henrietta M. King Estate, secured by a deed of trust of this date upon the said nine hundred eighty thousand eight hundred ninety and 73/100 (980,890.73) acres of land, and also secured by the royalties of the lessors in said lease in so far as they relate to the said nine hundred eighty thousand eight hundred ninety and 73/100 (980,890.73) acres of land.

7. The Humble Oil & Refining Company has also on this date loaned at interest to the said Executors and Trustees of the Estate of Henrietta M. King Five Hundred Thousand ($500,000.00) Dollars which the Executors and Trustees of the Henrietta M. King Estate agree to repay to the Humble Oil & Refining Company, or order, on or before five years after this date; and to further evidence and secure the repayment thereof, said Executors and Trustees have executed on this date to the Humble Oil & Refining Company a note for Five Hundred Thousand ($500,000.00) Dollars which is also secured by said deed of trust on said land and royalties.

8. Should oil, gas or other minerals be produced and saved from said premises at any time prior to the payment and discharge in full of the indebtedness secured by said deed of trust, then Humble Oil & Refining Company shall, during the first ten (10) years from date hereof, have the right to apply the proceeds of the royalties on oil, gas and other minerals under the terms of said lease covering the King Estate Lands upon the notes secured by said deed of trust. During the second ten (10) year period from date hereof Humble Oil & Refining Company shall have the right to appropriate unto itself and retain as its own property the proceeds of all the royalties on oil, gas and other minerals that may be produced and saved from said lease covering the King Estate Lands to the extent of One Hundred Twenty-seven Thousand Eight Hundred Twenty-four and 60/100 ($127,824.60) Dollars each year and to apply the proceeds from all the royalties on oil, gas and other minerals produced and saved from said lease in excess of One Hundred Twenty-seven Thousand Eight Hundred Twenty-four and 60/100 ($127,824.60) Dollars each year upon said notes. If the proceeds from all such royalties

in any year during said second ten (10) year period should not equal One Hundred Twenty-seven Thousand Eight Hundred Twenty-four and 60/100 ($127,824.60) Dollars, the deficiency between such proceeds and One Hundred Twenty-seven Thousand Eight Hundred Twenty-four and 60/100 ($127,824.60) Dollars shall not be carried forward into succeeding years.

After the expiration of twenty (20) years from this date if any portion of said notes, or any interest or attorneys' fees thereon, is still unpaid then Humble Oil & Refining Company shall have the right to apply all of the proceeds from such royalties upon said notes as long as any portion thereof, or interest or attorney's fees thereon is unpaid.

Before making the applications herein provided for upon said notes out of the proceeds of said royalties the lessors in said lease shall be entitled to retain a sufficient amount out of such proceeds to pay such income taxes as may be assessed against them by reason of their income from such royalties. The foregoing provisions of this paragraph shall not be so construed as to limit the right of Humble Oil & Refining Company to receive as its own property the proceeds from all royalties on oil, gas and other minerals produced from King Estate Lands to the extent of One Hundred Twenty-seven Thousand Eight Hundred Twenty-four and 60/100 ($127,824.60) Dollars per year during the second ten (10) year period from this date, as above provided. The "year" herein referred to is not the calendar year, but is the annual lease year and refers to successive annual periods from the date of said leases.

The provisions hereof with respect to the application of the proceeds of royalties shall not apply to any royalties that may be payable to the State of Texas.

Executed In Duplicate this 26th day of September A. D. 1933.

(Signed) Caesar Kleberg
Richard King
Independent Executors and Trustees under the Will of Henrietta M. King, Deceased.

Richard M. Kleberg
Jno. D. Finnegan
Samuel G. Ragland
Robt. J. Kleberg, Jr.
Trustees under the Will of Henrietta M. King, Deceased.

Alice G. K. Kleberg
Individually and as Independent Executrix of the Estate of Robert J. Kleberg, Sr., Deceased.

Richard M. Kleberg
Robt. J. Kleberg, Jr.
Advisory Executors of the Estate of Robert J. Kleberg, Sr., Deceased.

Humble Oil & Refining Company
By Wallace R. Pratt
Vice-President.

ATTEST:
Secretary

The State Of Texas,
County Of Kleberg

Acknowledged by Caesar Kleberg, Richard King, Robert J. Kleberg, Jr., John D. Finnegan, Samuel G. Ragland, Richard Mifflin Kleberg, and Alice G. K. Kleberg, in the capacities above stated, on September 27, 1933, before F. Fromme, Notary Public, Kleberg County, Texas.

Acknowledged by Wallace E. Pratt, in the capacity above stated, on September 26, 1933, before Fritz Kappenberger, Notary Public in and for Harris County, Texas.

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Summons, issued 12 1 54 and Marshal's Return thereon; Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 et seq.

* * * * * * * *

DEFENDANT'S MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT.

(Filed, Dec. 22, 1954.)

(Title Omitted.)

Defendant, Humble Oil & Refining Company, in limine, before answer filed, presents, for determination by the Court, the following defenses, by Motions to Dismiss and For More Definite Statement:

First--To Dismiss:

For Lack of Jurisdiction over (1) Subject Matter and

(2) over the Persons.

(A). Prior in time to the filing of this action plaintiffs filed in the District Court of Harris County, for the 129th Judicial District of Texas, Cause No. 444,773, styltd identically the same as this action. The petition filed in the said Texas Court is identical in every respect with the petition or complaint filed herein. Service of citation in said cause in the District Court of Harris County was completed on this

defendant prior in time to the completion of service in this cause, whereby the local Texas Court acquired prior jurisdiction over the persons as well as the property and subject matter involved in the two identical actions. By filing identical petitions in the local Texas Court and this Court, plaintiffs:

(1) Made an election as between the two forums having potential jurisdiction of both the persons and subject matter of the suits.

(2) By such election waived their right to maintain their suit in this Court on the basis of diversity of citizenship and amount in controversy.

(3) Voluntarily vested in the local Texas Court complete and irrevocable prior jurisdiction over the property involved and the persons of the plaintiffs.

Wherefore, this Court, in the interest of comity with the local Texas Courts should refuse to take jurisdiction of this action and thus disturb the prior jurisdiction acquired by the Texas Courts over the res of the property here involved, or to apply in this cause the local property laws of Texas, when the parties plaintiff herein had submitted their persons and the subject matter involved in this action to the jurisdiction of the Texas Courts, prior in time to invoking the jurisdiction of this Court.

Defendant, therefore, prays for an order dismissing this action for lack of jurisdiction over (1) the subject matter and (2) the persons of the parties hereto.

(B). By the affirmative averments of the complaint filed herein it is made to appear that there is

now pending in the District Court of Willacy County, for the One Hundred Third Judicial District of Texas, a certain cause styled Edwin K. Atwood et al., vs. Humble Oil & Refining Company and numbered 1539 on the docket of said Court, wherein plaintiffs aver that they seek the same relief as prayed for in Counts "Eight" to "Thirteen," inclusive, in their complaint filed before this Court.

(C). Defendant shows that the district Court of Willacy is a Court of general jurisdiction, and if said cause be pending as by plaintiffs averred, then, plaintiffs having submitted themselves and their property to the jurisdiction of that Court can adjudicate every claim or cause of action asserted by them in such pending cause, and to avoid a multiplicity of suits this Court should refuse to permit plaintiffs to split their cause of action, if any they have, by trying their claims piecemeal, partly in the State Court of Texas, in Willacy County, and partly in this Court; and, in any and all events Counts "Eight" to "Thirteen" should be stricken as redundant and immaterial under Rule 12(f), for plaintiffs pray for relief thereunder only in the event they "do not obtain" such relief in Cause No. 1539 aforesaid.

Wherefore, defendant prays:

(1) That this action be dismissed for lack of jurisdiction over (1) the subject matter and (2) the persons because, if plaintiffs' averments be true the District Court of Willacy County, Texas, has acquired prior jurisdiction over the persons of plaintiffs and defendant and all subject matter of plaintiffs' claims which are in fact raised by the pleadings therein, or

which could be or should be so raised in order to avoid a multiplicity of suits, and, alternatively

(2) For an order striking Counts "Eight" to "Thirteen," inclusive, as redundant and immaterial for plaintiffs affirmatively aver that the issues raised threby have already been, by them, submitted to a Court of competent jurisdiction for determination.

Second—To Dismiss

Failure to Join An Indispensable Party.

(A). Defendant shows that B. D. Tarlton, 1721 Wilson Tower, Corpus Christi, Texas, a citizen and resident of Texas, was, on or about the 12th day of January A.D. 1937, duly appointed Guardian of the Estate of Richard W. Atwood, a person of unsound mind, by the County Court of Willacy County, Texas, sitting in matters probate in Cause No. 208 on the docket of said Court. The said B. D. Tarlton is now and has been, at all times since said 12th day of January A.D. 1937, the duly appointed, qualified and acting Guardian of the Estate of Richard W. Atwood, whose principal estate has been at all such times, and is now in Willacy County, Texas, and, under local Texas law, the said B. D. Tarlton, acting under the orders and directions of the County Court of Willacy County, Texas, sitting in matters probate, as such Guardian, is the only person authorized, qualified or empowered by law to act for, or represent the said Richard W. Atwood in this, or any other proceeding involving or in anywise appertaining to his estate in Texas, and particularly in Willacy County.

(B). The said B. D. Tarlton, in his capacity of Guardian, aforesaid, is a necessary and indispensable party to this cause, and Alice B. Atwood, as next friend and conservatrix of the Estate of Richard W. Atwood, N.C.M., under appointment of an Illinois Court is wholly without power, right or lawful authority to appear herein in either such capacity, and her attempted appearance is a nullity and wholly void.

Wherefore, defendant prays for an order of Court:

(1) Dismissing the suit, in so far as the same pertains to Alice B. Atwood, as next friend and as conservatrix of the Estate of Richard W. Atwood, N.C.M.

(2) Requiring plaintiffs, within such time as may be specified by the order, to make B. D. Tarlton, Guardian of the Estate of Richard W. Atwood, a person of unsound mind, a party hereto, with provision for dismissal of the action, for failure to so comply, or, alternatively,

(3) For an order dismissing the action for failure to join B. D. Tarlton, Guardian, aforesaid, as a necessary and indispensable party hereto.

Third—For More Definite Statement Because of Vague and Ambiguous Pleading.

(A). The allegations of paragraphs 34, 35, 37, 38, 39, 40, 41, 43, 44, 45, 55 and 56 are so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading thereto, in this: Plaintiffs sue for the "income, profits, proceeds

and avails" derived from plaintiffs' one-eighth (1/8) share of royalty oil, gas and other minerals, without stating (1) what the nature of such "income, profits, proceeds and avails" is or might be, and (2) any facts from which defendant can determine the existence of any liability on its part to plaintiffs for other than the money royalty due under and by virtue of the terms of the lease. Defendant cannot be reasonably required to either admit or deny such vague and ambiguous averments without a more definite statement of the matters plaintiffs seek to place in issue.

(B). The allegations of paragraphs 19, 32 and 48 are so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading thereto, in this: Plaintiffs aver that the minerals owned by them and for which they sue "have an especial value to Plaintiffs," without stating what such "especial value" is, or without stating any facts from which defendant can determine the existence of an "especial value." Defendant cannot be reasonably required to either admit nor deny such vague and ambiguous averments without a more definite statement of the facts upon which plaintiffs predicate their conclusion of "especial value."

(C). The allegations of paragraphs 63 and 64 are so vague and ambiguous that defendant cannot be reasonably required to frame a responsive pleading, in this: Plaintiffs aver "ordinary" and "special" damages as a result of having "responsible" parties ready, willing and able to purchase plaintiffs' royalty share of oils and other minerals which plaintiffs claim, but they do not aver:

(1) Who such "responsible" parties are, or

(2) The facts upon which defendant may know what plaintiffs' "ordinary" damages are, as distinguished from the averred "special" damages, or

(3) The facts from which the pleader draws his bare conclusion of damages, whether "ordinary" or "special."

Defendant cannot be reasonably required to either admit or deny such vague and ambiguous averments without a more definite statement of the facts upon which plaintiffs predicate the conclusions set forth.

Wherefore, defendant prays for hearing and appropriate orders on the motions presented.

FELIX A. RAYMER,
(Felix A. Raymer).

Humble Building,
P. O. Box 2180,
Houston 1, Texas.

Certificate.

I certify that I have, this day, served a copy of the foregoing pleading upon plaintiffs' counsel, by delivtring a true copy thereof, in person, to William E. Junell, a member of the law firm of Barrow, Junell & Robertson, of Counsel for plaintiffs in said cause.

Dated at Houston, Texas, this 20th day of December, A. D. 1954.

FELIX A. RAYMER,
(Felix A. Raymer),
Counsel for Defendant.

Defendant's Request for Submission of Preliminary Motions; Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 et seq.

* * * * * * * *

DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT.

(Filed, Jan. 20, 1955.)

(Title Omitted.)

In support of its Motions to Dismiss defendant files the following documents and affidavits:

(1) Photostatic copy of plaintiffs' identical petition filed in the District Court of Harris County numbered 444,773 on the docket of said Court. This is marked "Exhibit A."

(2) Affidavit showing that the suit in the District Court of Harris County was filed prior in time to the suit in this Court. This is marked "Exhibit B."

(3) Certified copy of (1) Sheriff's return and (2) U. S. Marshal's return, showing service of citation in the State suit, prior in time to service of citation in the suit before this Court. These are marked "Exhibits C1 and C2."

(4) Certified copy. (1) order of appointment of a Texas Guardian for Richard W. Atwood, and (2) Certificate of Clerk showing that B. D. Tarlton is still the duly appointed, qualified and acting Guardian in such pending cause, and (3) affidavit of B. D. Tarlton, showing him to be a resident and citizen of Texas. These are marked "Exhibits D1, D2 and D3."

(5) Affidavit that the District Court of Willacy County, Texas is a Court of general jurisdiction under tht Constitution of the State of Texas. This is marked "Exhibit E."

On The Motion to Dismiss For Lack of Jurisdiction Over The Subject Matter and The Persons.

Defendant does not apprehend that any issue of fact will be drawn as to the pendency of an identical suit in the District Court of Harris County, nor that the jurisdiction of the State Court was invoked first, by a filing and service of process prior in time to the suit before this Court; since the acts evidencing such facts were the acts of plaintiffs' counsel. Nor can it be disputed that under the averments of plaintiffs' petitions in the State Court, as in this Court, the action is in rem, and not in personam.

Nor can it be an issuable fact that plaintiffs aver, page 3 of their petition before this Court, that they have a cause pending before the District Court of Willacy County, wherein the same parties are plaintiff and defendant, and in which cause it is averred the State Court has taken jurisdiction of the rem.

These facts existing, it is well settled that the State Court having first acquired jurisdiction over the property involved, comity requires that this Court refuse to accept and maintain jurisdiction. The rule is set forth in Farmers Loan & Trust Company vs. Lake Strett Elevated R.R. Company, 177 U.S. 52, 44 L. Ed. 667:

"The possession of the res vests the Court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto, and for the time being disables other courts of coordinate jurisdiction from exercising a like power. This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between Courts whose jurisdiction embraces the same subjects and persons.

"Nor is this rule restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another Court, but it often applies as well where suits are brought to enforce liens against specific propuerty, to marshal assets, administer trusts, or liquidate insolvent estates, and in suits of a similar nature where, in the progress of the litigation, the Court may be compelled to assume the possession and control of the property to be affected. The rule has been declared to be of especial importance in its application to Federal and state Courts. Peck v. Jenness, 7 How. 612, 12 L. Ed. 841; Freeman v. Howe, 24 How. 450, 16 L. Ed. 749; Moran v. Sturges, 154 U.S. 256, 38 L. Ed. 981; 14 Sup. Ct. Rep. 1019; Central Nat. Bank v. Stevens, 169 U.S. 432, 42 L. Ed. 807, 18 Sup. Ct. Rep. 403; Harkrader v. Wadley, 172 U.S. 148, 43 L. Ed. 399, 19 Sup. Ct. Rep. 119"

See also: Palmer vs. Texas, 212 U.S. 118, 53 L. Ed. 435; Penn General Casualty Company vs. Pannsylvania, 294 U.S. 89, 79 L. Ed. 850, and United States vs. Bank of New York and Tr. Company, 296 U.S. 463, 80 L. Ed. 331

The doctrine is applicable to both the Federal and State Courts, and is grounded in comity between Courts of coordinate jurisdiction. The basis of the rule is thus stated in Princess Lida vs. Thompson, 305 U.S. 456, 83 L. Ed. 285:

"* * * Certain it is, therefore, that if both Courts were to proceed they would be required to cover the same ground. This of itself is not conclusive of the question of the District Court's jurisdiction, for it is settled that where the judgment sought is strictly in personam, both the state Court and the federal Court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other. On the other hand, if the two suits are in rem, or quasi in rem, so that the Court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one Court must yield to that of the other. We have said that the principle applicable to both federal and state Courts that the Court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, adminis-

ter trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the Court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals."

While, of course, the petitions in this Court and in the State Court (Harris County) are identical and, therefore, identical questions are involved, such is not necessary for the application of the rule. In Lion Bonding & Surtty Company vs. Karatz, 262 U.S. 77, 67 L. Ed. 871, it is said:

"Where a Court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other Courts. Wabash R. Co. v. Adelbert College, 208 U.S. 38, 54; 52 L. Ed. 379, 386, 28 Sup. Ct. Rep. 182. Compare Oklahoma v. Texas, 258 U.S. 574, 581, 66 L. Ed. 771, 774, 42 Sup. Ct. Rep. 406. Possession of the res disables other Courts of co-ordinate jurisdiction from exercising any power over it. Farmers' Loan & T. Co. v. Lake Street Elev. R. Co., 177 U.S. 51, 61, 44 L. Ed. 667, 671, 20 Sup. Ct. Rep. 564. The Court which first acquired jurisdiction through possession of the property is vested, while it holds possession, with the power to hear and determine all controversies relating thereto. It has the right, while continuing to exercise its prior jurisdiction, to determine for itself how far it will permit any other Court to interfere with such possession and jurisdiction. Palmer v. Texas, 212 U.S. 118, 126, 122, 53 L. Ed. 435, 438, 439, 29 Sup. Ct. Rep. 230."

The same principle is applicable to the suit which plaintiffs aver is still pending in Willacy County. The allegations of the petition in the Willacy County suit are not set forth; but such Court is one of general jurisdiction under the Constitution of Texas, and, to avoid a multiplicity of suits, plaintiffs, if their averment be true regarding the pendency of Cause No. 1539 in the District Court of Willacy County, are held to the necessity of adjudicating their entire cause of action in one suit. They cannot "split" their cause of action and try it piece-meal. Craig vs. Broocks, 127 S.W. 572 (Writ of Error denied by the Supreme Court of Texas).

On The Motion to Dismiss For Failure to Join An Indispensable Party.

Article 1981 Revised Civil Statutes, 1925, enacted by the Legislature of the State of Texas, reads as follows:

"Suits for the recovery of personal property, debts or damages, and suits for title or possession of lands, or for any right attached to, or growing out of the same, or for injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this State; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator. Acts 1846, p. 363; P.D. 1447; G.L. Vol. 2, p. 1669."

Under this statute it has been uniformly held that a foreign guardian is without power to sue or be sued in Texas. The rule is well expressed in Faulkner

"No judgment can be rendered against an estate unless it has a legal representative before the Court. An administrator, appointed by the Courts of Ohio, could not, by virtue of said appointment, sue or be sued in the Courts of Texas, or in any way act as legal representative of said estate in Texas. An administrator is the agent solely of the Court appointing him, clothed with authority to administer only such assets as are within the jurisdiction of the Court making such appointment. In other words, an administrator has no extra-territorial authority. See Jones v. Jones Heirs, 15 Tex. 463, 65 Am. Dec 174; Clarke v. Webster, 94 S.W. 1088; Webster v. Clarke, 100 Tex. 333, 99 S.W. 1019, 123 Am. St. Rep. 813; Greer et al., v. Ferguson, et al., 56 Ark. 324, 19 S.W. 966; Hare v. Pendleton, 214 S.W. 948."

Other cases in point are: Orr vs. Wright, 45 S.W. 629, writ refused; Hoffman vs. Watkins, 130 S.W. 625 (Executor or administrator); Hicks vs. Shively, 130 S.W.(2) 102.

The United States Supreme Court in Mexican Central Railway Company vs. Eckman, 187 U.S. 429, 47 L. Ed. 245, held that, under the Texas statutes, the real party in interest is the guardian, and his residence determines the question of jurisdiction. The Texas statutes are there discussed and the Court announced the rule that it was on th guardian's citizenship and not the ward's that the jurisdiction of the Federal Court would depend. The language is clear:

"The question is whether under the laws of Texas a guardian can sue in his own name to recover damages for injuries sustained by the ward, and it is

unaffected by the permanent domicile of the ward. Hoyt v. Sprague, 103 U.S. 613, 26 L. Ed. 585; New Orleans v. Gaines, 138 U.S. 595, 606, sub nom. New Orleans v. Whitney, 34 L. Ed. 1102, 1106, 11 Sup. Ct. Rep. 428, 431; Delaware County v. Diebold Safe & Lock Co., 133 U.S. 473, 488, 33 L. Ed. 674, 680, 10 Sup. Ct. Rep. 399.

* * * * * * * *

"If in the state of the forum the general guardian has the right to bring suit in his own name as such guardian, and does so, he is to be treated as the party plaintiff so far as Federal jurisdiction is concerned, even though suit might have been instituted in tht name of the ward by guardian ad litem or next friend. He is liable for costs in the event of failure to recover and for attorney's fees to those he employs to bring the suit, and in the event of success, the amount recovered must be held for disposal according to law, and if he does not pay the same over to the parties entitled, he would be liable therefor on his official bond."

Rule 19, Federal Rules of Procedure, dealing with necessary parties provides:

"Rule 19. Necessary Joinder of Parties.

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses

to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff."

Plaintiffs aver a joint interest, in that, they say, petition, page 4, that they "were lawfully in possession of and were seized with the legal and equitable title to" and owned and held in fee simple the property described and sued for. By making the Illinois conservatrix a party, they recognized the application of Rule 19 above set forth. And, of course, it is the rule of decision that royalty owners are always indispensable parties. Keegan vs. Humble Oil & Refining Company, 155 F.(2) 971 (5th Circuit).

In the latter case the Court held:

"And the fact that a joinder of the absent parties might deprive the Court of jurisdiction does not make them any less indispensable."

The rule is well established, and works both ways, that is, if the guardian, executor or administrator is a resident of a different state, but the ward is not, the guardian's residence creates the necessary diversity. See Mecom vs. Fitzsimmons Drilling Company, 76 L. Ed. 233, where it is said:

"It is settled that the Federal Courts have jurisdiction of suits by and against executors and administrators if their citizenship be diverse from that of the opposing party, although their testators or intestates might not have been entitltd to sue or been liable to suit in those Courts for want of diversity of citizenship. Childress v. Emory, 8 Wheat. 642, 5 L. Ed. 705; Susquehanna & W. Valley Coal Co. v. Blatch-

ford, 11 Wall. 172, 20 L. Ed. 179; Rice v. Houston, 13 Wall. 66, 20 L. Ed. 484; Amory v. Amory, 95 U.S. 186, 24 L. Ed. 428; Blake v. McKim, 103 U.S. 336, 20 L. Ed. 563; American Bible Soc. v. Price, 110 U.S. 61, 28 L. Ed. 70, 3 S. Ct. 440; Continental Ins. Co. v. Rhoads, 119 U.S. 237, 30 L. Ed. 380, 7 S. Ct. 193.

"The petitioner insists that where an administrator is required to bring the suit under a statute giving a right to recover for death by wrongful act, and is, as here, charged with the responsibility for the conduct or settlement of such suit and the distribution of its proceeds to the persons entitled under the statute, and is liable upon his official bond for failure to act with diligence and fidelity, he is the real party in interest and his citizenship, rather than that of the beneficiaries, is determinative of federal jurisdiction. This we think is the correct view. The applicable statutes make the administrator the trustee of an express trust and require the suit to be brought and controlled by him."

And it makes no difference in what capacity the indispensable party is brought before the Court—as plaintiff, defendant, or an involuntary plaintiff—the Court will realign the parties where their real interest appears. Hamer v. New York Railways Company, 244 U.S. 266, 37 S.Ct. 511, 61 L.Ed. 1125.

When so realigned in the cause at bar, the Texas guardian must necessarily be a party plaintiff—thus destroying jurisdiction in this Court by virtue of diversity of citizenship Keegan vs. Humble, supra.

Defendant submits, therefore, that its motions to dismiss are well grounded, and requests directions from the Court to prepare an order dismissing the cause.

Respectfully Submitted,
(S.) FELIX A. RAYMER,
(Felix A. Raymer),

Humble Building,
P. O. Box 2180,
Houston 1, Texas.

If, however, the Court does not agree that the cause should be dismissed, defendant submits that it is entitle to a more definite statement, as prayed for in its alternative motion before the Court.

It does not, in defendant's opinion, require argument to show that the allegations of paragraphs 34, 35, 37, 38, 39, 40, 41, 43, 44, 45, 55 and 56 are too vague for defendant to reasonably be required to frame and answer, for certainly defendant is entitled to know what income (other than the royalty due) or what profits, proceeds and particularly what "avails" the plaintiff seeks to recover.

Likewise, a mere allegation of "especial value" as contained in paragraphs 19, 32 and 48, does not give defendant any information as to the nature of such "especial value," nor the basis of plaintiffs' claim therefor.

And, certainly the averments of paragraphs 63 and 64 should be particularized to give defendant notice of:

(1) Who the "responsible parties" are, or

(2) The facts upon which defendant may be advised as to what plaintiffs' "ordinary" damages are, as distinguished from the averred "special" damages, or,

(3) The facts from which the pleader draws his conclusions of damages, whether "ordinary" (whatever that means) as distinguished from "special" (also, whatever that means).

Defendant submits, therefore, that if its motion to dismiss be overruled, it is, nevertheless, entitled to a more definite statement as requested.

Respectfully Submitted,
(S.) FELIX A. RAYMER,
(Felix A. Raymer).

Humble Building,
P. O. Box 2180,
Houston 1, Texas.

Exhibit "A", Original Petition and Complaint in Case Edwin K. Atwood, et al., vs. Humble Oil & Refining Company, Texas State Court, No. 444,773; Omitted from the Printed Record, being heretofore copied at page 9.

* * * * * * * *

Exhibit "A"—Mineral Lease from Caesar Kleberg and Richard King, Independent Executors and Trustees under the Will of Mrs. Henrietta M. King, de-

ceased, et al., to Humble Oil & Refining Company, dated 9/26/33;

Exhibit "B"—14,034 Acres, San Juan de Carricitos Grant, Willacy County, Texas;

Exhibit "C"—14,034 Acres, San Juan De Carricitos Grant, Willacy County, Texas;

Exhibit "D"—Gonzales and Ramirez Surveys, in Jim Hogg County, Texas;

Exhibit "E"—S. H. Bell Property, Willacy County, Texas;

Exhibit "F"—S. H. Bell "B" Property, Willacy County, Texas;

Exhibit "G"—S. H. Bell Property, Willacy County, Texas;

Exhibit "H"—S. H. Bell "B" Property, Willacy County, Texas;

Exhibit "I"—Letter, Felix A. Raymer to Thomas Hart Fisher, dated 7/2/53;

Exhibit "J"—Document entitled "Designation of Producing Area";

Exhibit "K"—#133885 Designation Instrument Humble Oil & Refining Co., to Public;

Exhibit "L"—Non-exploration Contract between King Estate and Humble Oil & Refining Co., dated 9/26/33;

Exhibit "M"—Contract between King Estate and Humble Oil & Refining Company, dated 9/26/33;

Omitted from the Printed Record, being heretofore copied at pages 59 et seq.

* * * * * * * *

EXHIBIT "B"

The State of Texas,
County of Harris.

Before Me, the undersigned authority, a Notary Public in and for Harris County, Texas, on this day personally appeared T. E. Burnett, well known to me to be a credible person, and, after being by me duly sworn, on his oath stated:

"I have checked the files and papers in two suits: (1) Edwin K. Atwood, et al., vs. Humble Oil & Refining Company, #444,773 in the District Court of Harris County, for the 129th Judicial District of Texas, and (2) Edwin K. Atwood, et al., vs. Humble Oil & Refining Company, Civil Action No. 8630 pending in the United States District Court, for the Southern District of Texas, Houston Division, and those files and papers show that the suit in State Court was filed at 3:50 o'clock P.M. on December 1, 1954, while the suit in Federal Court was filed subsequently thereto, at 4:12 o'clock P.M. on the same date."

T. E. BURNETT,
(T. E. Burnett),
Affiant.

Subscribed And Sworn To before me this the 20 day of January, A. D. 1955.

CAROLYN BELL,
(Carolyn Bell),
Notary Public in and for
Harris County, Texas.

EXHIBIT C-1.

In The District Court of Harris County, 129th Judicial District of Texas.

The State of Texas,
County of Harris.
The State of Texas:
To Humble Oil & Refining Company, a Texas Corporation; Greeting:

You are hereby commanded to appear in the District Court of Harris County, for 129th Judicial District of Texas, in the Courthouse in the City of Houston, Texas, at or before ten o'clock a.m., of the Monday next after the expiration of 20 days after the date this citation is served upon you, then and there to answer, by filing a Written Answer to the Original petition of, Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, N. C. M., by Alice B. Atwood as his Next Friend and Conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N. C. M., Thomas H. Fisher and Ruth P. Fisher, plaintiffs, filed in said Court, on the 1st day of December, 1954, and is numbered 444,773, Styled Edwin K. Atwood, Et Al., vs. Humble Oil & Refining Company, a Texas Corporation, on the docket of said

Court, wherein plaintiffs sue and pray judgment. Alleging:

All as fully set out in accompanying copy of Plaintiffs' Original Petition.

A true copy of this writ, together with the accompanying copy of Plaintiffs' Original Petition shall be served upon you on or before the 2nd day of March, 1955, being the 90th day from date of issuance hereof.

If when so served, you fail to appear by filing Written Answer at or before ten o'clock a.m., on Monday next after the expiration of 20 days from date of strvice of this writ, judgment by default may be rendered against you then or at any time thereafter.

To Officer Serving:

Herein fail not under penalty of the law, and of this writ make due return on or before 20 days from date of service, or if not served, on or before 90 days from date of issuance of this citation.

Issued December 2nd, 1954.

Witness: R. L. Lindley, Clerk of said Court, and seal thereof at office in the City of Houston, Texas, this the 2nd day of December, 1954.

R. J. LINDLEY,
Clerk, District Court, Harris
County, Texas,
By AMY CHRISTEN,
Deputy.

No. 444,773

In the District Court of Harris County,

129th Judicial District of Texas

EDWIN K. ATWOOD, ET AL

vs. } CITATION

HUMBLE OIL & REFINING

COMPANY, a Texas

Corporation,

Issued December 2nd, 19 54

R. J. LINDLEY

Clerk District Court, Harris County, Texas.

By Anny Christian

Deputy.

Barrow J & R attys

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Harris County, Texas

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LEY

Deputy.

SHERIFF'S RETURN

Came to hand on the _____ day of _____ A. D., 195__; at _____ o'clock ____ M. and executed in _____ County, Texas, by delivering to each of the within named defendants, in person, a true copy of this Citation, together with the accompanying copy of _____ at the following times and places, to-wit:

NAME	DATE			TIME			Place and Course and Distance From Court House	Miles
	Month	Day	Year	Hour	Min.	M.		

SHERIFF'S RETURN

Received this writ on the 2 day of Nov., 1954 at 11 o'clock A. M. and executed the same in Harris County, Texas on the 2 day of Nov., 1954 at 11:05 o'clock A. M., by summoning the Humble Oil & Refining Company a corporation, {by delivering to Riley A. Rayburn agt, in person ~~by leaving in the principal office during office hours~~ of the said Humble Oil & Refining Company a true copy of this writ, together with accompanying certified copy plaintiff's original petition

Serving 1 copy $1.25

Mileage 8 .25

Total $1.50

C. V. BUSTER KERN, Sheriff, Harris County, Texas

By John Garmin

Issued: December 2nd, 1954.

R. J. LINDLEY,
Clerk, District Court,
Harris County, Texas,
By AMY CHRISTEN,
Deputy.

The State of Texas,
County of Harris.

I, R. J. Lindley, Clerk of the District Court of Harris County, Texas, do hereby certify that the above and foregoing is a true and correct copy of Citation, Together With Sheriff's Return Thereon in Cause No. 444,773, entitled Edwin K. Atwood, Et Al., vs. Humble Oil & Refining Company, a Texas Corporation as same appears on file in my office.

Given under my hand and the seal of said Court, at office in Houston, Texas, this the 19th day of January, 1955.

R. J. LINDLEY,
Clerk, District Court,
Harris County, Texas,
By MERLE BROWN,
Deputy.

EXHIBIT C-2.

Summons in a Civil Action.

Filed 7 day of Dec., 1954.

United States District Court for the Southern District of Texas, Houston Division.

Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, N.C.M., By Alice B. Atwood, as His Next Friend and Conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher, Plaintiff,

v. Civil Action File No. 8630

Humble Oil & Refining Company, a Texas Corporation, Defendant.

To the above named Defendant: Humble Oil & Refining Company, a Texas Corporation:

You are hereby summoned and required to serve upon Messrs. Barrow, Junell & Robertson plaintiff's attorneys, whose address is 337 Esperson Bldg., Houston, Texas, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

V. BAILEY THOMAS,
Clerk of Court,
LOIS WIECH,
(Lois Wiech),
Deputy Clerk.

(Seal of Court.)

Date: December 1, 1954.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Return on Service of Writ.

I hereby certify and return, that on the 6th day of December 1954, I received this summons and served it together with the complaint herein as follows: by serving the Humble Oil & Refining Company, thru Mrs. Elizabeth H. Kenney, Assistant Secretary in person at Houston, Texas on December 6th, 1954.

EMMETT M. SMITH,
United States Marshal,
By ELLIS G. BINFORD,
Deputy United States Marshal.

Marshal's Fees	
Travel	$ .10
Service ...	$2.00
	$2.10

Subscribed and sworn to before me, a ..... this ..... day of ....., 19 ....

.....,

(Seal)

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

EXHIBIT "D-1".

Order Appointing Guardian No. 208 in the County Court of Willacy County, Texas. In Probate.

No. 208 In Re: Estate of Richard W. Atwood, N.C.M.

In Re: Estate of Richard W. Atwood,

A Person of Unsound Mind.

On the 12th day of January, 1937, came on to be heard the application of Elise A. Baldwin, joined pro forma by her husband, James P. Baldwin, for the appointment of a guardian and the issuance of letters of guardianship of the estate of Richard W. Atwood, a person of unsound mind; and it appearing to the Court, and the Court being satisfied after due hearing, that due notice of said application has been given as required by law; that said Richard W. Atwood has been personally served with notice of the said application, and that the said Richard W. Atwood is a person of unsound mind and has been so adjudged, after a trial by jury and a verdict finding the said Richard W. Atwood to be of unsound mind, by a Court of competent jurisdiction of Cook County, Illinois; that he is capacitated to care for his property; that he is now and has been for many years past confined to the Kenilworth Sanitarium in said State on account of his mental condition; that he is over twenty-one (21) years of age; that the said Richard W. Atwood has no lawful guardian of his estate in the State of Texas; that both of the parents of the said Richard W. Atwood are deceased; that he has never been married; that he has only two

sisters living, to-wit: Alice Atwood and Elisa A. Baldwin, and only one brother living to-wit: Edwin Atwood, all of whom are disqualified from acting as guardian of the estate of the said Richard W. Atwood.

And it further appearing to the satisfaction of the Court from the evidence that B. D. Tarlton is a citizen of the State of Texas, and is not disqualified from receiving letters and acting as guardian of the estate of the said Richard W. Atwood, and that he has been requested so to act by applicants, and is entitled to be appointed such guardian and to receive such letters, and is the proper person to act as such guardian. And it further appearing to the satisfaction of the Court that the principal estate of the said Richard W. Atwood is situated in Willacy County, Texas, and a necessity exists requiring the appointment of a guardian of said estate of Richard W. Atwood for the proper protection of said estate, and that this Court has jurisdiction of said estate.

It is therefore ordered that the said B. D. Tarlton be, and is hereby, appointed guardian of the estate of the said Richard W. Atwood, and that letters issue to him on his giving bond in the sum of Five Thousand Dollars ($5000), payable and conditioned as required by law, and taking the oath within twenty (20) days.

It is further ordered that C. J. Scott, George R. Lochrie and W. G. Hecht, who are disinterested persons, be, and they are hereby appointed appraisers to make due appraisement of said estate and return such appraisement to the Court.

It is further ordered that the Clerk of this Court issue letters of guardianship to the said B. D. Tarlton when he has qualified according to law.

W. E. McCHAREN,
County Judge of Willacy
County, Texas.

Indorsed: No. 208 In the County Court of Willacy County, Texas.

In Probate. In Re: Estate of Richard W. Atwood, N. C. M. Order Appointing Guardian. Filed 1 day of Feb. 1937. N. C. Tracy, Clerk, County Court, Willacy County, Texas By Peggy O'Neal, Deputy.

The State of Texas,
County of Willacy.

I, W. F. Brownfield, Clerk of the County Court of Willacy County, Texas, do hereby certify that the foregoing is a true and correct copy of the Order Appointing Guardian, filed in Cause No. 208, Styled: Estate of Richard W. Atwood, N. C. M., filed in my office on the 1st day of February, 1937 and duly recorded in Probate Volume 4, Pages 88-89.

Witness my hand and seal of office, at office in Raymondville, Texas, this 27th day of December, A. D., 1954.

W. F. BROWNFIELD,
County Clerk, Willacy
County, Texas,
By MARJORIE JOY,
Deputy.

(Court Seal)

EXHIBIT "D-2".

In County Court,
Willacy County, Texas,
October Term, A.D., 1954.

The State of Texas,
County of Willacy.

I, W. F. Brownfield, Clerk of the County Court of Willacy County, Texas, do hereby certify that on the 12th day of January, A. D., 1937, B. D. Tarlton was duly tppointed by said Court, Guardian of the Person and Estate of Richard W. Atwood, N. C. M., and that he qualified as such on the 30th day of January, A. D., 1937, as the law requires, and is still in full forct and effect, and that said Guardianship is still pending.

Given under my hand and seal of office at office in Raymondville, Texas, this the 27th day of December, A. D., 1954.

W. F. BROWNFIELD,
Clerk, County Court,
Willacy County, Texas,
By MARJORIE JOY,
Deputy.

(Court Seal)

EXHIBIT "D-3".

The State of Texas,
County of Nueces.

Before Me, the undersigned authority, on this day personally appeared B. D. Tarlton, to me well known

as a credible person, and, after being by me duly sworn, on his oath stated:

"I am the B. D. Tarlton who was appointed Guardian of the Estate of Richard W. Atwood, a person of unsound mind, on January 12, 1937, by Order of the County Court of Willacy County, Texas, sitting in matters probate.

"I am still the duly qualified and acting Guardian of said ward's estate, and am now and have been, for more than twenty-five years, a resident and citizen of Nueces County, and the State of Texas."

B. D. TARLTON,
(B. D. Tarlton),
Affiant.

Sworn To And Subscribed before me on the 19th day of January, A. D. 1955.

MRS. FLOYD GRAHAM,
(Mrs. Floyd Graham),
Notary Public,
Nueces County, Texas.

EXHIBIT "E".

The State of Texas,
County of Willacy.

Before Me, the undersigned authority, a Notary Public in and for Willacy County, Texas, on this day personally appeared S. L. Gill, well known to me to be a credible person, and, after being by me duly sworn, on his oath stated:

"I am a duly licensed and practicing attorney at the bar of the State of Texas, with residence in Raymondville, Willacy County, Texas. I regularly practice in the District Court of Willacy County, for the 103rd Judicial District of Texas, and know that said Court is a Court of general jurisdiction under the Constitution of the State of Texas."

S. L. GILL,
(S. . Gill),
Affiant.

Sworn To And Subscribed before me on the 19th day of January, A. D. 1955.

OSCAR CAVAZOR,
Notary Public, Willacy
County, Texas.

Plaintiffs' Brief in Opposition to Defendant's Motion to Dismiss for More Definite Statement;

Exhibit (not marked)—Letter, Humble Oil & Refining Company to V. Bailey Thomas, Clerk, U. S. District Court, dated 3/9/55;

Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 et. seq.

* * * * * * * *

Defendant's Brief in Rejoinder to Plaintiffs' Brief in Opposition to Defendant's Motion to Dismiss, etc.,

Exhibit (not marked)—Letter, Wm. E. Junell to Hon. Ben C. Connally, U.S. District Judge, dated 3/21/55;

Omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at pages, 1 et. seq.

* * * * * * * *

Plaintiffs' Responsive Brief to Defendant's Reply Brief (Mislabelled "Rejoinder Brief);

Exhibit (not marked)—Letter, Felix A. Raymer to V. Bailey Thomas, Clerk, U.S. District Court, dated 3/30/55;

Defendant's Reply Brief to Plaintiffs' Responsive Brief; Omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at Pages, 1 et. seq.

* * * * * * * *

LETTER DATED JUNE 17, 1955, FROM WM. E. JUNELL TO HONORABLE BEN C. CONNALLY, JUDGE.

Barrow, Junell & Robertson
Attorneys at Law
Esperson Building
Houston 2

June 17, 1955.

George T. Barrow
Wm. E. Junell
Geo. L. Robertson.

Telephone Capitol 9989.

Honorable Ben C. Connally,
Judge of the United States District Court,
Post Office Building,
Houston, Texas.

Dear Judge Connally:

I am writing you this letter in connection with our recent conference with you and Mr. Felix A. Raymer, attorney for Humble Oil & Refining Company, in the above suit.

At the time of such conference, you suggested that the plaintiffs file an amended complaint in order to set forth with more particularity the exact relief desired by the plaintiffs. At the time of that conference, we advised you that we are acting as local counsel for Mr. Thomas Hart Fisher, an attorney of Chicago, Mr. Fisher being one of the parties plaintiff in the case and having intended to try the case himself. Mr. Fisher was in Europe at the time of the conference in your office and we are advised that he is still in Europe and will be there or in Burma through the

month of July. He is expected back in his office in Chicago about August 1st.

Since the conference in your office, we have been advised by Mr. Fisher that he will appreciate it very much if the matter of requiring an amended pleading can be postponed until he has returned to Chicago and has an opportunity to come to Houston to discuss the matter with the Court. In view of our position as local counsel, we respectfully request that the Court not require a repleading until after Mr. Fisher has had an opportunity to confer with the Court about the matter. We will be in touch with Mr. Fisher immediately upon his return and feel sure that he will make arrangements to come to Houston at the earliest time convenient with the Court after August 1st.

Yours very truly,

WM. E. JUNELL.

WEJ/pgl.

cc—Mr. Felix A. Raymer
Legal Department
Humble Oil & Refining Company
Houston 1, Texas.

LETTER DATED JULY 5, 1955, FROM ADELE LANDERS, SECRETARY TO JUDGE CONNALLY TO WM. E. JUNELL.

Mr. Wm. E. Junell.
Barrow, Junell & Robertson
Esperson Building
Houston 2, Texas

In re: Civil Action No. 8630 Edwin K. Atwood, et al., v. Humble Oil & Refining Company—Houston Division.

Dear Mr. Junell:

Judge Connally has asked that I acknowledge your letter of June 17. In reply, you are advised that the date of filing of an amended complaint will be delayed until August 15, 1955.

If counsel for the defendant has objection to this further delay, he may advise the Court promptly and the matter will be reconsidered.

Sincerely,

.....,
Secretary to Judge Connally.

cc—Mr. Felix A. Raymer
Legal Department
Humble Oil & Refining Company
Houston 1, Texas

LETTER DATED JULY 8, 1955, FROM WM. E. JUNELL TO MRS. ADELE LANDERS, SECRETARY TO JUDGE CONNALLY.

Barrow, Junell & Robertson
Attorneys at Law
Esperson Building
Houston 2

Clerk's File.

George T. Barrow
Wm. E. Junell
Geo. L. Robertson

Telephone CApitol 9989

Miss Adele Landers
Secretary to Judge Connally
United States District Court
Southern District of Texas
Houston 2, Texas

Dear Miss Landers:

Upon receipt of your letter of July 5, advising that the date for filing of an amended complaint will be delayed until August 15, 1955, I communicated such fact to the office of Thomas Hart Fisher in Chicago.

I am not in receipt of a reply from Mr. Fisher's Office stating that he will return to his office early in August. A copy of your letter has been forwarded to Mr. Fisher abroad, and I will let you know as soon as possible whether the August 15th date is satisfactory.

Very truly yours,
WM. E. JUNELL,
(Wm. E. Junell).

WEJ/Bw

cc—Mr. Felix A. Raymer
Legal Department
Humble Oil & Refining Company
Houston 1, Texas

LETTER DATED AUGUST 23, 1955, FROM V. BAILEY THOMAS, CLERK, TO BARROW, JUNELL & ROBERTSON, AND FELIX A. RAYMER.

Barrow, Junell & Robertson
Attention: Mr. George T. Barrow
337 Esperson Building
Houston, Texas
Mr. Felix A. Raymer
Humble Building
P. O. Box 2180
Houston, Texas

Re: Civil Action No. 8630, Edwin K. Atwood, et al., vs. Humble Oil & Refining Co.—Houston Division.

Gentlemen:

The Honorable Ben C. Connally, Judge, has this date made the following notation on the Motion Calendar, in the above styled action:

"It having been called to my attention that plaintiff has failed to file an amended petition, originally set for August 1st, or within time as extended to August 15th, a motion to dismiss the action will be entertaintd on September 6, 1955, unless the amendment be filed before that date.

Clerk will notify counsel. C."

Sincerely,
V. BAILEY THOMAS,
Clerk,
By RUBY MILLER,
Deputy.

LETTER DATED SEPT. 7, 1955, FROM HONORABLE BEN C. CONNALLY, JUDGE, TO WM. E. JUNELL AND FELIX A. RAYMER.

Mr. Wm. E. Junell
Barrow, Junell & Robertson
337 Esperson Building
Houston, Texas
Mr. Felix A. Raymer
Humble Oil & Refining Company
P. O. Box 2180
Houston, Texas

In re: Civil Action No. 8630, Edwin K. Atwood, et al., vs. Humble Oil & Refining Co., Houston Division.

Gentlemen:

Following our pretrial conference of last Thursday, September 1, I have prepared a Pretrial Order to carry into effect the results thereof. From the notes which I made at the time, I believe that the theories under which plaintiffs stated they desired to proceed are accurately reflected.

Mr. Junell will approve the order and forward sam to Mr. Raymer for similar approval, and Mr. Raymer

will return same to the Court. In the event counsel for either of the parties is unable to approve same, he will immediately advise the Court in writing of his reasons for such disapproval. Counsel will insert the correct date on Page 5.

Sincerely,

PRE-TRIAL ORDER (PROPOSED BY THE COURT BUT NEVER ENTERED).

(Title Omitted.)

Be It Remembered that on September 1, 1955, a pretrial conference was called at the request of counsel for the plaintiff, at which time the following proceedings were had.

Counsel for plaintiff were reminded of the fact that on May 6, 1955, upon the coming on for consideration of the defendant's motion to dismiss and for more definite statement, the Court had entertained the view that the plaintiffs' complaint did not comply with Rule 8 in that it failed to set out by a short and plain statement the claims which the plaintiffs asserted, and the relief which they demanded; and that plaintiff had been ordered to replead by August 1, 1955, which time had been extended at plaintiff's request to August 15, and had been further extended at plaintiffs request to the date of the pre-trial hearing.

Counsel for plaintiffs were directed to state orally the substance of their position and the claims advanced. It appears that under date of September 26,

1933, an oil, gas and mineral lease had been executed in favor of Humble Oil & Refining Company, lessee, by certain lessors, by, through and under whom plaintiffs hold, and the validity and binding effect of said lease between the plaintiffs and Humble Oil & Refining Company has heretofore been determined in prior litigation. It further appears that the present litigation involves questions arising under terms of such lease, and the activity of the lessee pursuant thereto. Counsel for the plaintiffs stated their contentions and claims to be substantially as follows:

(a) The lease in question provides for a primary term of twenty years, and provides that upon expiration of said primary term, if oil, gas or other minerals are then being produced from said land, "the lessee shall promptly designate and define in writing the area or areas on which oil, gas and or other minerals are then being produced, it being contemplated that lessee shall have the right to retain under the terms of this lease the area or areas included within the geologic structures or formations proven to be productive at the end of said twenty year period; . . .". Counsel for plaintiffs state that at the termination of the primary term, lessee was producing from approximately 2,000 acres; that, purporting to act under the paragraph of the lease above referred to, said lessee designate approximately 50,000 acres which it contends it was entitled to designate under the stated paragraph. Plaintiffs question the bona fides of lessee in making said designation, and contend that the designated area should be reduced to the area which was producing at expiration of the primary term, or to such area only slightly in excess thereof.

By way of relief, plaintiffs seek to have the designated area so restricted.

(b) Counsel for plaintiffs call attention to a supplemental agreement, under date of September 26, 1933, between the lessors and lessee of the above-mentioned oil, gas and mineral lease, and which counsel states to have been a part of the same agreement between the parties, and executed contemporaneously therewith, containing a provision reading in part as follows:

"In the event oil and or gas should be discovered in paying quantities on the leased premises, we agree to develop the productive structure with reasonable diligence as specified in the leases. We further agree subject to the orders, rules and regulations of the Railroad Commission of Texas and or other lawful authority to produce from said leased premises currently approximately that portion of our total production in the State of Texas that we estimate the proven reserves on these leasd premise or of our total proven reserves in the State of Texas from time to time."

Plaintiffs contend that there has been a breach of said provision in that the production from the leased premises has not been that contemplated by the above-mentioned paragraph; and that, on a comparison of the proven reserves on the leased premises, with the lessee's total proven reserves in the State of Texas, substantially more oil should have been produced from the leased premises. By way of relief, plaintiffs seek cancellation of the lease and the contemporaneous instrument.

(c) Calling attention to a provision of the lease reading in part as follows:

"After the discovery of oil and or gas on said premises in paying quantities the lessee agrees reasonably to develop the producing structure, . . .".

Plaintiffs contend that lessee has breached the provision which is quoted in part above, and has failed reasonably to develop, and that substantially increased production should have been had. By reason of this alleged breach, plaintiffs seek cancellation of the lease and contemporaneous instrument.

(d) Counsel for plaintiffs stated that their original petition likewise sought partition in kind of such quantities of oil as had been produced and stored on the surface. Upon the assurance of counsel for the defendant lessee that no substantial quantity of oil was stored upon the surface, but that production was run into the lines of a pipe line common carrier, counsel for plaintiffs stated that they did not desire to pursue their claim for such relief.

(e) Counsel for plaintiffs stated that they advanced a claim for the manufactured value of their royalty oil produced from the leased premises; that is, plaintiffs contend that they were entitled to the value in money of the refined products of the crude oil produced from their premises, on the theory that the lessee had failed to deliver their royalty oil to them: that lessee had instead refined the crude oil and sold the refined products at a price greatly in excess of the value of the crude oil; that such use of their royalty oil by lessee constituted a conversion of same.

and entitled plaintiffs to the increased value. Counsel for the lessee assured the Court and opposing counsel that little, if any, of the oil produced from the leased premises had been refined by the lessee, and stated that all or substantially all thereof had been sold as an arms length transaction to a common carrier pipe line company. Counsel for plaintiffs suggested that if this be the case, plaintiffs would not pursue the relief asserted in this paragraph. The Court requested counsel for lessee to make inquiry from appropriate officials of Humble Oil & Refining Company, and if the facts be as counsel stated, that a certificate to that effect from a responsible officer of that corporation be furnished. It is contemplated that such a statement will be forthcoming from the lessee, and that plaintiffs will not pursue this cause of action further.

(f) Counsel for plaintiffs stated that plaintiffs likewise sought to recover approximately $1,500,000 of accrued royalties held by the lessee for their use and benefit, and interest on same. It was plaintiffs' position that while tender had been made from time to time in the past on such royalties, on each occasion the tender had been qualified, and conditions imposed which were not acceptable to plaintiffs. The defendant contended on the other hand that tender had been made on a number of occasions under circumstances which amounted to a legal and unqualified tender, and, while admitting that lessee held large sums of money for plaintiffs as accrued royalties, defendant denied liability for any interest on such sums. Counsel for the defendant likewise stated that the defendant was ready, willing and able to make full accounting for such accrued royalties. It was agreed among counsel, with the concurrence of the Court,

that an appropriate official of the defendant Humble Oil & Refining Company would certify as to the quantity of oil produced from the leased premises from the beginning of production under the subject lease to January 31, 1955; based on this figure, unqualified tender of royalties accrued and owing would be made by lessee to the plaintiffs; the plaintiffs would forego their demand and claim for interest on this amoun, and would accept such unqualified tender. This being true, plaintiffs would not further pursue their claim for royalties unless and until they had proof that the certificate as to the quantity of oil produced was erroneous, in which event the matter might be reopened.

(g) Counsel for plaintiffs stated that as a part of their petition and complaint a cause of action was asserted for discovery of certain relevant facts and information which plaintiffs contend were in the possession and control of the defendant, and to which plaintiffs desired access. Counsel were instructed to proceed under the appropriate Federal Rules of Civil Procedure for discovery, and to omit claim for such relief from the amended petition to be filed.

By reason of the foregoing proceedings, it is hereby ordered that plaintiffs will amend and file an amended complaint herein on or before September 15, 1955; submission of defendant's motion to dismiss and for more definite statement will come on September 25, 1955, with leave granted to defendant to amend or supplement such motion in the light of plaintiffs' amended complaint. While it is not contemplated that additional briefs will be required, counsel for all par-

ties may file such additional briefs as desired on or before October 3, 1955.

Done at Houston, Texas, this ..... day of September, 1955.

.....
Judge.

Approved:
WM. E. JUNELL,
Attorney for Plaintiffs.
BARROW, JUNELL & ROBERTSON,
Of Counsel.
FELIX A. RAYMER,
Attorney for Defendant.

LETTER DATED SEPT. 14, 1955, FROM WM. E. JUNELL TO HONORABLE BEN C. CONNALLY, JUDGE.

Barrow, Junell & Robertson
Attorneys at Law
Esperson Building
Houston 2

George T. Barrow
Wm. E. Junell
Geo. L. Robertson
Fred C. Brigman, Jr.

Telephone CApitol 2-9988
September 14, 1955

Honorable Ben C. Connally
U. S. District Judge
Post Office Building
Houston, Texas

Dear Judge Connally:

I have conferred with Mr. Fisher concerning the proposed Pretrial Order submitted to us with your letter of September 7th.

I wish to advise that we can not approve the Pretrial Order as submitted and set forth below are the reasons for our position and our suggested changes therein.

In the seventh line from the bottom of Page 2 the word "designate" apparently should read "designated".

At the end of Paragraph (d) on Page 4 we request that the following phrase be inserted:

". . .provided that the defendant lessee should agree to deliver plaintiffs' royalty under the mineral lease at any time plaintiffs should demand the same in the future."

This added provision would guarantee the plaintiffs delivery of their royalty oil in kind at any time they should demand it in the future.

In the sixth line from the bottom of Page 4 we think the words "their share of" should be inserted after the words "entitle plaintiffs to".

We object to the phrase "would forego their demand and claim for interest on this amount, and", which appears in the second and third lines on Page 6. We think this phrase should be eliminated, at least until it is determined whether Humble will make the payment of accrued royalties in a proper unqualified manner and, in any event, unless and until the plaintiffs' loss by way of interest on the income taxes which plaintiffs will have to pay has been determined. The Court will remember that when Mr. Fisher mentioned this subject of interest at the Pretrial conference, he explicitly made mention of the provision in the mineral lease which requires the lessee to furnish plaintiffs with sufficient money to pay their income taxes (see Page 44 of the original complaint). It is

our position that we would not under any circumstances waive or forego our demand for damages to the extent of interest which the plaintiffs are required to pay on income taxes by reason of Humble's failure to comply with such contractual obligation. Moreover, we object to the inclusion in the Pretrial Order of any agreement between counsel relative to the waiver of any claim of interest in view of the fact that the matter of the payment of royalties has not yet been settled.

We objtct to the last sentence in Paragraph (f) on Page 6 which reads as follows:

"This being true, plaintiffs would not further pursue their claim for royalties unless and until they had proof that the certificate as to the quantity of oil produced was erroneous, in which event the matter might be reopened."

This entire paragraph should be eliminated from the Pretrial Order because plaintiffs have not agreed and are not willing to make any agreement regarding the amount of royalties paid until Humble has completed its actual payment and the plaintiffs have had a chance to consider the entire situation as to royalties, not only from the producing area on tht oil and gas actually produced, but also on the oil and gas which the future evidence may show should have been produced in the past and should be produced in the future.

With respect to Paragraph (g) and the Court's instructions to plaintiffs to omit from the amended petition to be filed the separate claims for discovery, plaintiffs call the Court's attention to the fact that the plainiffs are claiming that hey have a contractual right to the disclosures sought by them and in our opinion in order to preserve our claims concern-

ing such rights, it is imperative that we retain the amended pleading special counts for such disclosure and discovery.

I have forwarded the original of the proposed Pretrial Order to Mr. Raymer, together with a copy of this letter.

Yours very truly,
Wm. E. JUNELL.

WEJ/pjw
cc: Mr. Ftlix Raymer
Legal Department
Humble Oil & Refining Co.
Humble Building
Houston, Texas
cc: Mr. Thomas H. Fisher
Attorney at Law
135 South LaSalle Street
Chicago 3, Illinois

LETTER DATED SEPT. 15, 1955, FROM WM. E. JUNELL TO HONORABLE BEN C. CONNALLY, JUDGE.

Barrow, Junell & Robertson
Attorneys at Law
Esperson Building
Houston 2

George T. Barrow
Wm. E. Junell
Geo. L. Robertson
Fred C. Brigman, Jr.

Telephone CApitol 2-9988

Honorable Ben C. Connally
U. S. District judge
Post Office Building
Houston, Texas

Dear Judge Connally:

I have today filed in the Clerk's office an amendment to the original complaint of the plaintiffs in the above Civil Action. A copy of the amendment is enclosed.

By this amendment, we have undertaken to state as simply; clearly and concisely as possible the claims of plaintiffs as referred to in your proposed Pretrial Order.

Since there is still pending and as yet unsettled the matter of Humble's payment of accrued royalties, the furnishing of the certificate of sale of oil produced to Pan American Pipe Line Company and the furnishing of the sworn statement of accounting showing all production through January 31, 1955, the amendment we have filed is the most we can do at this

time. Once Humble has performed in accordance with Mr. Raymer's statements at the Pretrial conference, we will be in a position to strike certain counts from the complaint; however, we want to make certain that these things have happened before any counts are eliminated from the complaint.

Yours very truly,

Wm. E. JUNELL.

WEJ/pjw
cc: Mr. Felix Raymer
cc: Mr. Thomas H. Fisher

AMENDMENT TO PLAINTIFFS' ORIGINAL PETITION AND COMPLAINT.

(Filed, Sept. 15, 1955.)

(Title Omitted.)

Now come Edwin K. Atwood, et al., Plaintiffs, by Barrow, Junell & Robertson, their attorneys, and amend their Original Petition and Complaint by adding thereto the following Counts at the foot thereof, as follows:

Count Twenty-four.

Plaintiffs incorporate herein and make a part of Count Twenty-four hertof each and all of the allegations of Paragraph (1) of Count One, and Paragraphs (7) and (8) of Count Four and Paragraphs (50) and (51) of Count Fourteen hereof.

(77) Plaintiffs hold and claim all of the lessors' rights, titles and interests under said so-called mineral lease in said minerals lying in Willacy and Kenedy Counties, Texas (except an undivided 3/32nds thereof) and all of the lessors' rights, titles and interests under said so-called mineral lease in the first of said two tracts lying in Jim Hogg County, Texas (except an undivided 3/32nds thereof) and all of the lessors' rights, titles and interests under said so-called minerals in the second of said two tracts lying in Jim Hogg County, Texas (except an undivided 3/32nds thereof).

(78) The mineral lease in question provides for a primary term of twenty years and provides that upon the expiration of said primary term if oil, gas or other minerals are then being produced from said land "the lessee shall properly designate and define in writing the area or areas on which oil, gas and/or other minerals are then being produced, it being contemplated that lessee shall have the right to retain under the terms of this lease the area or areas included within the geologic structures or formations proven to be productive at the end of said twenty-year period;. . ." At the termination of said primary term, the Defendant lessee was producing minerals from approximately 2,000 acres of said mineral land lying in Willacy and Kenedy Counties, Texas. Purporting to act under the paragraph of said mineral lease above referred to, the Defendant lessee designated approximately 50,000 acres which it contended it was entitled to designate under the stated paragraph. Plaintiffs deny the bona fides of the Defendant lessee in making said designation and contend that the designated area should be reduced to the

area which was producing at the expiration of said primary term or to an area only slightly in excess thereof.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and restricting the designated area to said producing area of approximately 2,000 acres or slightly in excess thereof, and for their costs; and that Plaintiffs may have all other general and special relief.

Count Twenty-five.

Plaintiffs incorporate herein and make a part of Count Twenty-five each and all of the allegations of Paragraph (1) of Count One and Paragraphs (7) and (8) of Count Four and Paragraph (58), (59) and (60) of Count Seventeen hereof.

(79) The Defendant lessee has breached said provision in said non-exploration contract in that the production from the leased premises has not been that contemplated by the said provision of said mineral lease; and in that, on a comparison of the proven reserves on the leased premises, with the Defendant leasse's total proven reserves in the State of Texas, substantially more oil should have been produced from the leased premises.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and decreeing that said mineral lease and said non-exploration contract be canceled and declared null and void, and for their costs; and that Plaintiff may have all other general and special relief.

Count Twenty-six.

Plaintiffs incorporate herein and make a part of Count Twenty-six each and all of the allegations of Paragraph (1) of Count One and Paragraphs (7) and (8) of Count Four and Paragraph (57) of Count Seventeen hereof.

(80) The Defendant lessee has breached the provison of said mineral lease quoted in part above and has failed reasonably to develop the producing structure as required by said provision, and substantially increased production of minerals from said producing structure should have been had by the Defendant lessee.

Wherefore, Plaintiffs pray for a judgment or decree of this Court adjudging and decreeing that said mineral lease and said non-exploration contract be canceled and declared null and void and for their costs; and that Plaintiffs may have all other general and special relief.

EDWIN K. ATWOOD,
ALICE B. ATWOOD,
RICHARD W. ATWOOD, by Alice B. Atwood as his Next Friend and Conservatrix,
ALICE B. ATWOOD, as Conservatrix of the Estate of Richard W. Atwood,
THOMAS H. FISHER,
RUTH P. FISHER,
By (S.) Wm. E. JUNELL,
Their Attorneys,
Plaintiffs.

LETTER DATED SEPT. 20, 1955, FROM FELIX A. TAYMER TO V. BAILEY THOMAS, CLERK.

Humble Oil & Refining Company
Law Department
Houston 1, Texas

Rex G. Baker
Vice President and
General Counsel
Nelson Jones
General Attorney
J. Q. Weatherly
Associate General Counsel
Carl Illig
Associate General Counsel
Lee M. Sharear
Felix A. Raymer
R. Chester Day
Allen S. Key
David Ball
D. H. Gregg
Moody P. Pearson
Lee Hill
Charles E. Shaver
Dillard W. Baker
Hugh Lamar Stone, Jr.
William J. Merrill
Frank L. Heard, Jr.
Kenneth C. Minter
Walter F. Woodul, Jr.
Walter B. Morgan
Robert C. McCarty
A. E. Collier
Sam G. Reams

Charles C. Keeble
Kenneth Roberts
Barbara H. Bartlett
John K. Meyer
Jack A. Dalious
J. Lane Peck
Ruth B. Bivin
Counsel

Mr. V. Bailey Thomas, Clerk
United States District Court
Federal Building
Houston, Texas

Dear Mr. Thomas:

I enclose to you copy of a statement relating to oil runs involved in the above captioned suit together with photostatic copies of various checks issued by Humble Oil & Refining Company as a result of a pre-trial agretment entered into in the above captioned suit under the direction and with the concurrence of Judge Connally.

These enclosures are to be filed among the papers of this case and as Judge Connally will no doubt be interested in the question of compliance with his pre-trial order, I suggest that the enclosed papers be placed upon his desk and his attention directed to them.

Yours very truly,
FELIX A. RAYMER,
(Felix A. Raymer).

FAR/cp
Encls.

Exhibit (not marked)—Photostats of 7 Humble Oil & Refining Company Vouchers;

Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 et seq.

* * * * * * * *

LETTER DATED SEPT. 19, 1955, FROM FELIX A. RAYMER TO THOMAS HART FISHER.

Humble Oil & Refining Company
Houston 1, Texas
Copy

September 19, 1955

Mr. Thomas Hart Fisher
135 South LaSalle Street
Chicago 3, Illinois

Dear Sir:

Complying with the understanding reached at the pre-trial hearing in the above captioned cause, held before Honorable Ben C. Connally, United States District Judge, Thursday, September 1, 1955, I enclose to you the following:

(1) Statement, constituting a complete audit of all oil produced, saved and marketed from the lands partitioned to Edwin K. and Alice B. Atwood out of lands lying within the boundaries of the Humble Oil & Refining Company—King Ranch oil, gas and general mining and mineral lease.

(2) Similar statement with regard to the gas produced from the same lands.

(3) Checks drawn on Humble Oil & Refining Company, payable to the order of Edwin K. Atwood, Alice B. Atwood, Thomas Hart Fisher and Ruth P. Fisher, described as follows:

1. Voucher numbered 91772, check numbered S177242, in the amount of $14.31.

2. Voucher numbered 91759, check numbered R083045, in the amount of $2,911.20.

3. Voucher numbered 91760, check numbered R083046, in the amount of $10,158.53.

4. Voucher numbered 91761, check numbered R083047, in the amount of $898,928.54.

5. Voucher numbered 91763, check numbered R083048, in the amount of $573.95.

6. Voucher numbered 91758, check numbered R033049, in the amount of $70,805.12.

7. Voucher numbered 196405, check numbered K640349, in the amount of $32,941.91.

The first six checks above set forth are drawn on Guaranty Trust Company of New York and aggregate $983,391.65 tnd are chargtd against Humble Oil & Refining Company's "Oil Purchase Account"; while the seventh check is drawn on The National Bank of

Commerce, of Houston, and is charged against the "Gas Purchase Account." The sum total of all checks is $1,016,333.56.

While the statements above referred to account for and show full 8/8 of production from the lands involved, together with the money value of the full 8/8 production, less authorized deductions, including taxes, they also reflect the amounts already paid to the Atwoods and to you and Mrs. Fisher, together with the amounts which the books and records of Humble Oil & Refining Company show as due to the same parties as royalty under the lease held by it and covering the lands involved, through the month of February, 1955.

The enclosed checks are drawn and tendered in payment of the amount which, as the statements above referred to reflect, the books and records of Humble Oil & Refining Company show to be due the named parties, as lessors, as a result of Humble Oil & Refining Company's operations on the land, under the lease, through the month of February, 1955.

Of course, as understood by counsel with the concurrence of the Court, there has been withheld from the tender of amount due on February 28, 1955, the sum of One Hundred Twenty Five Thousand Dollars ($125,000.00) to protect Humble Oil & Refining Company as a result of the writ of garnishment served upon it in the suit of Bascom Cox, et al v. Thomas Hart Fisher, et al, numbered 32,695-B, pending on the docket of the District Court of Cameron County, for the 138th Judicial District of Texas. This sum, or

so much thereof as may be released from the effect of the writ of garnishment, will be tendered when the garnishment proceedings have been finally concluded.

Yours very truly,
Original signed FELIX A. RAYMER,
(Felix A. Raymer)

FAR/cp
Encls.
cc: Mr. V. Bailey Thomas, Clerk
United States District Court
Federal Building
Houston, Texas
cc: Mr. William E. Junell
Barrow, Junell & Robertson
Attorneys at Law
Esperson Building
Houston 2, Texas

Affidavit of O. L. Luper, dated 9/20/55;

Recapitulation of Statements of Oil Produced and Marketed from certain Prouerties of Humble Oil & Refining Company;

Recapitulation of Statements of Gas Produced and Marketed from certain Properties of Humble Oil & Refining Company;

Omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at Pages 1 et seq.

* * * * * * * *

LETTER DATED SEPT. 20, 1955, FROM FELIX A. RAYMER TO HONORABLE BEN C. CONNALLY, JUDGE.

Humble Oil & Refining Company
Law Department
Houston 1, Texas

Rex G. Baker
Vice President and
General Counsel
Nelson Jones
General Attorney
J. Q. Weatherly
Associate General Counsel
Carl Illig
Associate General Counsel

Lee M. Sharear
Felix A. Raymer
R. Chester Day
Allen S. Key
David Ball
D. H. Gregg
Moody P. Pearson
Lee Hill
Charles E. Shaver
Dillard W. Baker
Hugh Lamar Stone, Jr.
William J. Merrill
Frank L. Heard, Jr.
Kenneth C. Minter
Walter F. Woodul, Jr.
Walter B. Morgan
Robert C. McCarty

A. E. Collier
Sam G. Reams
Charles C. Keeble
Kenneth Roberts
Barbara H. Bartlett
John K. Meyer
Jack A. Dalious
J. Lane Peck
Ruth B. Bivin

Counsel

Honorable Ben C. Connally
United States District Judge
Federal Building
Houston, Texas

Dear Judge Connally:

In today's mail I have forwarded to Mr. Thomas Hart Fisher the statement of oil produced, as contemplated in the pre-trial hearing of September 1. The same enclosure contained Humble Oil & Refining Company's checks aggregating $1,016,333.56, for payment of royalty which those statements showed was due to lessors. Copies of all papers and photostats of all checks were, at the same time mailed to Mr. Junell and to the clerk for filing among the papers of the cause, with request that they be placed before you, that you might be informed as to the progress being made by defendant in complying with your pre-trial order.

A thorough check is still in progress regarding disposition of oil run from the property involved, and certificate of the proper official will be filed just as soon as I am sure of the facts to be recited therein.

I am, I must confess, a little confused as to the present status of the case and my position, as to time, in filing further motions or responsive pleadings, in view of the objections levelled by plaintiff to your pre-trial order, as presently drafted, and the amendment filed by plaintiff on September 15.

It seems to me that the pre-trial order as prepared by you fairly and correctly sets forth the results of the discussion held in your office on September 1st, and that plaintiff's objections are, therefore, directed to the accuracy of your statements of what there transpired. I am in agreement with you; but, in view of plaintiff's objections, where do we presently stand?

In my opinion the "amendment" filed by plaintiff neither complies with the letter nor the spirit of your order to re-plead. The same pleadings are still before the Court, merely with additional "Counts" which, to my mind actually add to the pre-existing confusion. I am, as defendant's counsel, in no better position to draft a responsive pleading than I was before the filing of the amendment, and I am somewhat concerned over the question of whether or not my time for filing additional motions or briefs is running against me.

I, therefore, suggest a further conference, if agreeable with the Court, in the hope of clarifying the present situation.

Your directions in this regard are invited.

Yours truly,

FELIX A. RAYMER,

(Felix A. Raymer).

FAR cp

cc: Barrow, Junell & Robertson
Attorneys at Law
Esperson Building
Houston, Texas

LETTER DATED SEPT. 21, 1955, FROM HONORABLE BEN C. CONNALLY, JUDGE, TO FELIX A. RAYMER

Mr. Felix A. Raymer
Legal Department
Humble Oil & Refining Company
Houston 1, Texas

In re: Civil Action No. 8630
Edwin K. Atwood, et al v.
Humble Oil & Refining Company
Houston Division

Dear Mr. Raymer:

I have your letter of September 20, in connection with recent developments in the above-styled action.

At the time of our pretrial conference of a few weeks ago, I did not understand that a substantial period of time would be required for you to furnish the information which we discussed. Such being the case, I feel that the next move is appropriately yours, and I am sure you will, with all dispatch, procure and furnish plaintiffs the information as to the disposition of the runs from the property during the period in question. If you will advise me when that information is made available, I will then fix a further time within which plaintiffs may amend, and an additional time thereafter in which you may move and answer. The time limits which we have heretofore fixed apparently were insufficient in view of the delay occasioned in collecting this information.

I concur in your thought that the so-called amendment filed by plaintiffs does not comply either with the letter or spirit of my order that plaintiffs amend

to comply with Rule 8. It will be necessary that plaintiffs amend further, but I believe it will be desirable to wait until the information which you are to procure is made available to them before insisting upon compliance with the order.

I will be glad to confer further with counsel thereafter on the terms of the pretrial order to be entered.

Very truly yours,

cc—Mr. Wm. E. Junell
Barrow, Junell & Robertson
Esperson Building
Houston 2, Texas

LETTER DATED SEPT. 27, 1955, FROM FELIX A. RAYMER TO THOMAS HART FISHER.

Humble Oil & Refining Company

Houston 1 Texas

Copy

September 27, 1955.

Mr. Thomas Hart Fisher
135 South LaSalle Street
Chicago 3, Illinois

Dear Tom:

I enclose to you certificate of D. F. Haynes with regard to the disposition of the oil run from the Atwood leases.

You will note, of course, that some 350,000 barrels of the total production was delivered to Humble Oil

& Refining Company's refinery at Baytown and this was done only for the purpose of finding a temporary outlet for the oil rather than to close in the wells and thereby stay production. Of this 350,000 barrels, under our contentions seven-eighths would have belonged to Humble anyway and you and your clients would be interested only in one-eighth part of that sold to and refined by the Baytown refinery.

I am filing a copy of this certificate with the clerk and requesting that it be called to Judge Connally's attention.

With the furnishing of this certificate I believe that I have now complied with all of the requirements imposed upon me as a result of the pre-trial hearing.

Yours very truly,

Original Signed FELIX A. RAYMER.

(Felix A. Raymer).

FAR/cp
Encl.

cc: Honorable Ben C. Connally
United States District Judge
Federal Building
Houston, Texas

cc: Barrow, Junell & Robertson
Esperson Building
Houston, Texas

LETTER DATED SEPT. 27, 1955, FROM FELIX A. RAYMER TO HONORABLE BEN C. CONNALLY, Judge.

Humble Oil & Refining Company
Law Department
Houston 1, Texas

Rex G. Baker
Vice President and
General Counsel
Nelson Jones
General Attorney
J. Q. Weatherly
Associate General Counsel
Carl Illig
Associate General Counsel

Lee M. Sharear
Felix A. Raymer
R. Chester Day
Allen S. Key
David Ball
D. H. Gregg
Moody P. Pearson
Lee Hill
Charles E. Shaver
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William J. Merrill
Frank L. Heard, Jr.
Kenneth C. Minter
Walter F. Woodul, Jr.
Walter B. Morgan
Robert C. McCarty
A. E. Collier

Sam G. Reams
Charles C. Keeble
Kenneth Roberts
Barbara H. Bartlett
John K. Meyer
Jack A. Dalious
J. Lane Peck
Ruth B. Bivin
Counsel

September 27, 1955

Honorable Ben C. Connally
United States District Judge
Federal Building
Houston, Texas.

Dear Judge Connally:

In today's mail I have forwarded to Mr. Thomas Hart Fisher with a carbon copy to Mr. V. Bailey Thomas, clerk of your Court, a certificate from D. F. Haynes, Manager of the Crude Oil Department, Humble Oil & Refining Company, which certificate deals with the disposition made of the oil produced and run from the Atwood property in Willacy County.

I have requested Mr. Thomas to file the certificate among the papers of the cause and to direct your attention to the certificate as filed in order that you may be fully advised of the progress made in complying with your pre-trial directions.

With the filing of this certificate I believe I have complied with all of your pre-trial directions to the defendant. If, however, any matters are still in abey-

ance I will appreciate my attention being called to it either by you or by plaintiff's counsel.

Yours very truly,
FELIX A. RAYMER,
(Felix A. Raymer).

FAR/cp

cc: Mr. Thomas Hart Fisher
135 South LaSalle Strtet
Chicago 3, Illinois
cc: Barrow, Junell & Robertson
Esperson Building
Houston, Texas

LETTER DATED SEPT. 27, 1955, FROM FELIX A. RAYMER TO V. BAILEY THOMAS, CLERK.

CA—8630.

Filed 28th day of September, 1955.
V. BAILEY THOMAS,
Clerk,
By EDWIN A. BLYTHE,
Deputy.

Humble Oil & Refining Company
Law Department
Houston 1, Texas

Rex G. Baker
Vice President and
General counsel
Nelson Jones
General attorney

J. Q. Weatherly
Associate General Counsel
Carl Illig
Associate General Counsel

Lee M. Sharear
Felix A. Raymer
R. Chester Day
Allen S. Key
David Ball
D. H. Gregg
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Charles C. Keeble
Kenneth Roberts
Barbara H. Bartlett
John K. Meyer
Jack A. Dalious
J. Lane Peck
Ruth B. Bivin
Counsel

September 27, 1955

Mr. V. Bailey Thomas, Clerk
United States District Court
Federal Building
Houston, Texas

Dear Sir:

Enclosed you will find a duplicate copy of a certificate of D. F. Haynes to be filed among the papers of the above captioned civil action. This certificate is filed in accordance with the directions of the Court at a pre-trial hearing held on September 1st last.

When the enclosure has been filed, please call it to Judge Connally's attention in order that he may be advised as to the progress made in complying with his pre-trial directions.

Yours very truly,
FELIX A. RAYMER,
(Felix A. Raymer).

FAR/cp
Encl.

Affidavit of D. F. Haynes, dated 9/27/55;

Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1, et seq.

* * * * * * * *

LETTER DATED OCT. 25, 1955, FROM V. BAILEY THOMAS, CLERK, TO WM. E. JUNELL, THOMAS HART FISHER, AND FELIX A. RAYMER

Mr. Wm. E. Junell
Barrow, Junell & Robertson
337 Esperson Building
Houston, Texas

Mr. Thomas Hart Fisher
135 South LaSalle Street
Chicago 3, Illinois

Mr. Felix A. Raymer
Humble Oil & Refining Company
P. O. Box 2180
Houston, Texas

Re: Civil Action No. 8630 Edwin K. Atwood, et al., vs. Humble Oil & Refining Co.—Houston Division.

Gentlemen:

The Honorable Ben C. Connally, Judge, has this date made the following notation on the Calendar Sheet, in the above styled action:

"The defendant having heretofore, by letter of September 19, 1955, furnished plaintiffs the information requested as a result of pretrial conference, the date within which plaintiffs may file an amended pleading in which to state clearly and concisely the nature of their cause of action and the relief sought, is extended to November 7, 1955. No further extensions will be granted.

Clerk will notify counsel."

Sincerely,

V. BAILEY THOMAS,
Clerk,
By RUBY MILLER,
Deputy.

LETTER DATED NOV. 9, 1955, FROM V. BAILEY THOMAS, CLERK, TO BARROW, ETC., FISHER, AND RAYMER, ATTORNEYS.

Barrow, Junell & Robertson
337 Esperson Building
Houston, Texas
Att: Mr. George T. Barrow
Mr. Thomas Hart Fisher
135 South LaSalle Street
Chicago 3, Illinois
Mr. Felix A. Raymer
Humble Oil & Refining Company
P. O. Box 2180
Houston, Texas

Re: Civil Action No. 8630 Edwin K. Atwood, et al., vs. Humble Oil & Refining Co.—Houston Division.

Gentlemen:

The Honorable Ben C. Connally, Judge, has this date made the following notation on the Calendar Sheet, in the above styled action:

"Counsel for plaintiffs having failed to amend his pleading herein to comply with Rule 8(a) requiring a clear, plain and concise statement of the nature of plaintiffs' cause of action and the relief sought, despite repeated orders of this Court to that effect and continued extensions of the period of time within which counsel was permitted to do so, the action is dismissed of the Court's own motion.

Clerk will notify counsel. Counsel for defendant will present order to this effect within five days. C."

Sincerely,

V. BAILEY THOMAS,
Clerk,
By RUBY MILLER,
Deputy.

LETTER DATED NOV. 15, 1955, FROM FELIX A. RAYMER TO V. BAILEY THOMAS, CLERK.

Rex G. Baker
Vice President and
General Counsel
Nelson Jones
General Attorney
J. Q. Weatherly
Associate General Counsel
Carl Illig
Associate General Counsel

Lee M. Sharear
Felix A. Raymer
R. Chester Day
Allen S. Key
David Ball
D. H. Gregg
Moody P. Pearson
Lee Hill
Charles E. Shaver
Dillard W. Baker
Hugh Lamar Stone, Jr.
William J. Merrill

Frank L. Heard, Jr.
Kenneth C. Minter
Walter F. Woodul, Jr.
Walter E. Morgan
Robert C. McCarty
A. E. Collier
Sam G. Reams
Charles C. Keeble
Kenneth Roberts
Barbara H. Bartlett
John K. Meyer
Jack A. Dalious
J. Lane Peck
Ruth B. Bivin
Counsel
Humble Oil & Refining Company
Law Department
Houston, 1 Texas

Mr. V. Bailey Thomas, Clerk
United States District Court
Federal Building
Houston, Texas

Dear Mr. Thomas:

In compliance with the Calendar notation made by Judge Connally in the above captioned civil action on November 9, 1955, which was the subject matter of your letter to me of the same date, I enclose to you the original and one copy of the suggested order which Judge Connally directed defendant's counsel to present.

I will appreciate your presenting this order to Judge Connally for his settlement, calling his attention to the fact that the recitations in the suggested order

relating to dates and occurrences were taken from information reflected by his Calendar notations. Copy of the enclosed goes forward to opposing counsel by carbon copy of this letter to you.

Yours very truly,

F. A. RAYMER,

(Felix A. Raymer).

FAR/cp
Encls.

cc: Messrs. Barrow, Junell & Robertson
337 Esperson Building
Houston, Texas
Mr. Thomas Hart Fisher
135 South LaSalle Street
Chicago 3, Illinois

Received 11-16-55.

ORDER OF DISMISSAL.

(Filed, Nov. 17, 1955.)

In the District Court of the United States for the Southern District of Texas, Houston Division.

Edwin K. Atwood, et al., Plaintiffs,
vs. Civil Action No. 8630.
Humble Oil & Refining Company, Defendant.

In this cause, pending a determination of defendant's motions to dismiss and for a more definite statement, at the Court's direction, pre-trial hearing was

held on May 6, 1955, with all parties represented by their respective counsel, at which time the Court ordered plaintiffs to replead, by August 1, 1955, in conformity with Rule 8, by filing herein a pleading setting out a short and plain statement of the claims which they assert and the relief by them demanded.

Thereafter, at plaintiffs' request, and without objection, the time for filing such repleader was extended by the Court to August 15, 1955, at which time, plaintiffs having failed to comply, counsel were notified by the Clerk, at the Court's direction, that unless plaintiffs had complied with the order to replead by September 6, 1955, a motion to dismiss would be entertained by the Court.

Again, and without objection, plaintiffs time to replead was successively extended by the Court to September 15, 1955, and finally to November 7, 1955.

Plaintiffs having failed to comply with the Order of May 6, 1955, within the extensions of time granted by the Court, and by November 7, 1955, the Court is of the opinion that plaintiffs have wilfully failed and refused to make ready the case, or cause the case to be made ready, to be placed on the Trial Calendar, in violation of Local Rule 22(a), of this Court.

To properly regulate the practice of this Court, in the orderly dispatch of business now pending before it, the Court of its own motion, and as a result of plaintiffs' repeated failure to obey its orders to replead, Orders, Adjudges and Decrees that this cause be and the same is here and now dismissed at plaintiffs' costs.

The Clerk will enter.

BEN C. CONNALLY,
United States District Judge.

Dated the 17th day of November, 1955.

CERTIFIED COPY OF LOCAL RULE 22 OF THE LOCAL RULES OF THE UNITED STATES DISTRICT OF TEXAS.

Rule 22: Disposal of Cases Without Trial.

In these instances, and in instances provided by Law or Court Rules, the Court may, with or without notice to the parties, dismiss any case other than a criminal case for want of prosecution:

(a) When Plaintiff shall in any case for more than sixty (60) days after filing suit wilfully fail or refuse to have Defendants, or some of them, served with process, or shall wilfully fail or refuse to make ready the case, or cause same to be made ready, to be placed on the Trial Calendar.

(b) If Plaintiff or his attorney shall, after notice, fail or refuse to appear at the time and place fixed for a pre-trial hearing in a case where a pre-trial hearing is permitted, or fail or refuse to appear at the time and place fixed for a hearing in or a trial of the case.

(c) Where a case has been pending in this Court for more than a year without any proceeding having been taken therein during such year.

(d) Upon motion of any party showing good cause for dismissal for want of prosecution after notice to all other parties to the suit.

LETTER DATED NOV. 18, 1955, FROM V. BAILEY THOMAS, CLERK, TO GEORGE T. BARROW.

United States District Court
Office of the Clerk
222 Post Office Building
Houston 2, Texas

Mr. George T. Barrow
Barrow, Junell & Robertson
377 Esperson Building
Houston, Texas

In re: Civil Action No. 8630, Edwin K. Atwood, et al., v. Humble Oil & Refining Company—Houston Division.

Dear Mr. Barrow:

With reference to your conversation with Judge Connally of this date requesting that the record reflect the Court's action on the affidavit of Thomas H. Fisher, dated November 4, 1955, Judge Connally has instructed me to advise you that the following notation has been made thereon:

"Tendered for filing 11-7-55, and leave to file denied."

The instrument will be retained by me as a part of the record, and may be incorporated in the appellate papers if desired.

I am likewise instructed to advise you that the Court will not entertain further motion to set aside, alter or amend the order of dismissal heretofore entered.

Very truly yours,
V. BAILEY THOMAS,
Clerk,
By RUBY MILLER,
Deputy.

cc—Mr. Felix A. Raymer
Houston, Texas
cc—Mr. Thomas H. Fisher
Chicago, Illinois

MOTION FOR LEAVE TO FILE AFFIDAVIT OF THOMAS H. FISHER IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS.

(Title Omitted.)

Now come Edwin K. Atwood, et al., Plaintiffs, by Barrow, Junell & Robertson, their attorneys, and move the Court for leave to file the affidavit of Thomas H. Fisher, one of the Plaintiffs herein, in opposition to the Defendant's motion to dismiss.

EDWIN K. ATWOOD, et al.,
By WM. E. JUNELL,
Their Attorneys,
Plaintiffs.

BARROW, JUNELL & ROBERTSON,
Esperson Building,
Houston 2, Texas,
Attorneys for Plaintiffs.

AFFIDAVIT OF THOMAS H. FISHER IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, WITH COURT'S NOTATION THEREON DENYING LEAVE TO FILE AFFIDAVIT.

Tendered for filing 11/7/55 and leave to file denied.
CONNALLY, Judge.

(Title Omitted.)

State of Illinois,
County of Cook. ss.

Thomas H. Fisher, being first duly sworn, on oath deposes and says that he is one of the Plaintiffs in this action.

Affiant further states that a pretrial conference was held in this cause on September 1, 1955; that under date of September 7, 1955 the Honorable Ben C. Connally, District Judge of the United States District Court for the Southern District of Texas, before whom said pretrial conference was held, sent a letter to the respective counsel for both Plaintiffs and Defendant, in which letter was enclosed the form of so-called "Pretrial Order"; that true copies of said letter of September 7, 1955 and said enclosed form of so-called "Pretrial Order" are attached hereto and made a part hereof, marked "Exhibit A" and "Exhibit B", respectively.

Affiant further states that subsequent thereto, on September 14, 1955, counsel for Plaintiffs sent a letter to Judge Connally, a copy of which is attached hereto and made a part hereof, marked "Exhibit C".

Affiant further states that on September 15, 1955, counsel for Plaintiffs sent a further letter to Judge Connally, a copy of which is attached hereto and made a part hereof, marked "Exhibit D".

Affiant further states that on September 15, 1955 Plaintiffs duly filed their amendment to the original Petition and Complaint in this cause, a copy of which was enclosed in the foregoing letter of the same date from counsel for Plaintiffs to Judge Connally marked "Exhibit D".

Further affiant saith not.

THOMAS H. FISHER.

Subscribed and sworn to before me this 4th day of November, 1955.

BEATRICE McCAFFREY,
Notary Public.

Exhibit "A"—Letter, Hon. Ben Connally, U. S. District Judge to Wm. E. Junell, et al., dated 9 7 55;

Exhibit "B"—Pre-Trial Order (Proposed by the Court but never entered);

Omitted from the Printed Record, being heretofore copied at pages 361 et seq.

Exhibit "C"—Letter, Wm. E. Junell to Hon. Ben Connally, Judge, U. S. District Court, dated 9 14 55;

Exhibit "D"—Letter, Wm. E. Junell to Hon. Ben Connally, Judge, U. S. District Court, dated 9 15 55;

Exhibit (not marked)—Letter, Wm. E. Junell to V. Bailey Thomas, Clerk, U. S. District Court, dated 11 17 55;

Omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, being copied at pages 1 et seq.

PLAINTIFFS' MOTION TO SET ASIDE LATER OR AMEND ORDER OF DISMISSAL.

(Title Omitted.)

Come Now plaintiffs in the above civil action and move that the Court set aside, alter or amend its order of dismissal heretofore entered in this civil action and as grounds for such motion would respectfully show unto the Court the following:

I.

Plaintiffs' complaint, as amended, is not in violation of Rule 8(a) requiring a clear, plain and concise statement of the nature of plaintiffs' cause of action and the relief sought, and is not in violation of any other applicable rule of procedure.

II.

In support of this motion plaintiffs file herewith the affidavit of Thomas H. Fisher, one of the parties plaintiff in this civil action, said affidavit being the one dated November 4, 1955, and heretofore on November 7, 1955, tendered to the Court for filing along with plaintiffs' motion made at that time for leave to file the affidavit of Thomas H. Fisher in opposition to defendant's motion to dismiss. Said affidavit has not to this time been filed by the Clerk but the Clerk was directed by the Court to hold said affidavit among the papers on file in this civil action.

Wherefore, premises considered plaintiffs pray that this motion be granted and that the Court's order of

dismissal heretofore entered herein be set aside, altered or amended, and that the case be reinstated on the docket of the Court.

GEORGE T. BARROW,
(George T. Barrow),
Attorney for Plaintiffs.

Of Counsel:
BARROW, JUNELL & ROBERTSON,
337 Esperson Building,
Houston 2, Texas,
Attorneys for Plaintiffs.

NOTICE OF APPEAL

(Filed, Dec. 8, 1955.)

In the District Court of the United States for the Southern District of Texas, Houston Division.

Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, N.C.M., by Alice B. Atwood as his Next Friend and Conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher, Plaintiffs,

vs. Civil Action No. 8620.

Humble Oil & Refining Company, a Texas corporation, Defendant.

Notice is hereby given that Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, N.C.M., by Alice B. Atwood as his Next Friend and Conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard

W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher, Plaintiffs, hereby appeal to the United States Court of Appeals for the Fifth Circuit from that certain order of dismissal entered in this cause on the 9th or the 17th days of November, 1955, or thereabouts, and from all other orders entered in this cause subsequent to said dates of the 9th or the 17th days of November, 1955.

EDWIN K. ATWOOD, ALICE B. ATWOOD, RICHARD W. ATWOOD, N.C.M., by ALICE B. ATWOOD as his Next Friend and Conservatrix, ALICE B. ATWOOD, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., THOMAS H. FISHER and RUTH P. FISHER, Plaintiffs,

By GEORGE T. BARROW,
Their Attorneys.

BARROW, JUNELL & ROBERTSON,
Esperson Building,
Houston 2, Texas,
Attorneys for Plaintiffs.

Appeal Bond; Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 et seq.

CLERK'S CERTIFICATE

United States of America,
Southern District of Texas.

I, V. BAILEY THOMAS, Clerk of the United States District Court for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and all proceedings had in the case, as itemized in the Appellant's Amended Designation of Contents of Record, Page 1, and as called for in the Appellee's Designation of Contents of Record, Page... of this Transcript, in Cause No. 8630, on the Civil Docket of said Court at Houston, entitled Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, N.C.M., by Alice B. Atwood, as his next Friend and Conservatrix, Alice B. Atwood as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas Hart Fisher and Ruth P. Fisher, Plaintiffs, versus Humble Oil & Refining Company, a Texas corporation, Defendant, as the same now appears on file and of record in my office.

To Certify Which, witness my hand and the Seal of said Court at Houston, in said District, this the 12 day of January, A. D. 1956.

V. BAILEY THOMAS,
Clerk, United States District Court, Southern District of Texas,
By W. PAUL HARRISS,
(W. Paul Harriss),
Deputy.

(Seal)

LIBRARY
SUPREME COURT U.S.

IN THE

Supreme Court of the United States

October Term, 1957

No. 266

HUMBLE OIL & REFINING COMPANY, *Petitioner*

v.

EDWIN K. ATWOOD, ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Fifth Circuit

DILLARD BAKER
WALTER B. MORGAN
JOHN K. MEYER
FELIX A. RAYMER
Humble Building,
P. O. Box 2180,
Houston, Texas
Counsel for Petitioner

Of Counsel:
NELSON JONES
P. O. Box 2180,
Houston 1, Texas

ALPHA LAW BRIEF CO., 402 M & M BLDG., HOUSTON 2

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28 U.S.C.A. 1254(1)	2

IN THE

Supreme Court of the United States

October Term, 1957

No._____

HUMBLE OIL & REFINING COMPANY, *Petitioner*

v.

EDWIN K. ATWOOD, ET AL., *Respondents*

ON PETITION FOR WRIT OF CERTIORARI

Humble Oil & Refining Company, a Texas corporation, prays for the issuance of this Court's Writ of Certiorari to review the judgment of the United States Court of Appeals, Fifth Circuit entered on May 17, 1957, in that certain cause, styled and numbered on the docket of said Court as follows: *Edwin K. Atwood, et al. v. Humble Oil & Refining Company*, No. 15918.

Opinion Below

The opinion in the Court below has been neither officially nor unofficially reported. The only opinion filed in the case is set forth at page 211 of the Certified Record, and appears at page 17 of this Petition as Appendix "A".

Jurisdiction of This Court

The judgment of the Court of Appeals, which Petitioner seeks to have reviewed (R. 220) is dated May 17, 1957, and was entered on the same date. Copy of such judgment appears at page 220 of the Certified Record and at page 26 this Petition, as Appendix "B". No motion for rehearing was filed; and there has been no application for nor extension of time within which to petition for certiorari. This Court has jurisdiction to review the judgment or decree in question by writ of certiorari under the provisions of 28 U.S.C.A. 1254(1), C646, 62 U. S. Stat. 928, June 25, 1948. The question presented is within the considerations envisioned by Rule 19(b) of this Court, for the judgment of the Court of Appeals has the effect of nullifying the intent and purport of Rules 8(e)(1) and 41(b), Federal Rules of Civil Procedure, promulgated by this Court.

The Question Presented For Review

Did the Court of Appeals err in its holding that the Trial Judge was without power under Rule 8(a) and (e)(1), *Federal Rules of Civil Procedure*, to order a repleader, unless the complaint was so prolix, verbose and repetitious as to require peremptory and final dismissal of the suit?

FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

Rule 8. General Rules of Pleading.

(a) Claims For Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim,

crosselaim, or third-party claim, shall contain * * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and * * *.

(e) Pleading To Be Concise And Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. * * *

Rule 41. Dismissal of Actions.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. * * * Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits. (28 U.S.C.A. following Section 723C).

LOCAL RULE 22 FOR THE DISTRICT COURTS OF THE SOUTHERN DISTRICT OF TEXAS

Rule 22. Disposal of Cases Without Trial.

In these instances, and in instances provided by law or Court Rules, the Court may, with or without notice to the parties, dismiss any case other than a criminal case for want of prosecution:

(a) When plaintiff shall in any case for more than sixty (60) days after filing suit * * * willfully fail or refuse to make ready the case, or cause same to be made ready, to be placed on the Trial Calendar. (R. 201).

Statement of the Case

Federal Jurisdiction in the Court of first instance was based upon averments of diversity of citizenship with the amount in controversy exceeding $3,000.00. (R. 10).

The original complaint (R. 9 to 121) contains 112 pages of printed matter—45 pages in the complaint proper, and 67 pages of exhibits. The complaint contains 63 adoptions by reference which results in the necessity of reading 544 pages under circumstances far more tedious than reading 544 consecutive pages, before the complexities of the suit can be understood and resolved. With this in mind the trial judge called a pre-trial conference which was held in chambers on May 6, 1955 (R. 157), 163, 200), at which time he ordered complainants (Respondents here) to replead by August 1, 1955, in conformity with the provisions of Rule 8(a) and (e)(1), *Federal Rules of Civil Procedure*, by filing a pleading "setting out a short and plain statement of the claims which they assert and the relief by them demanded." (R. 200). The time within which complainants were to comply with the Court's order to replead was extended, at complainants' request, until August 15, 1955 (R. 159). Upon complainants' failure to replead by that date, as directed, without offering any excuse for such failure or requesting any additional time, the trial judge, on his own motion, extended the time until September 6, 1955, inviting a motion to dismiss if repleader was not filed by that time (R. 161, 200).

Prior to this new date for filing the repleader, at complainants' request, a second pre-trial conference was held. (R. 161). At this conference complainants were directed to state *orally* the substance of their complaint and the relief demanded. (R. 163). From this *oral* statement the

trial judge was able, for the first time to untangle the intricate web of contingent relief, cross-references, bills of discovery, counts and paragraphs contained in the 112 page complaint and from such *oral* statement was able to summarize the complainants' claims in four and one-half pages of a proposed pre-trial order which, because of objections from complainants, was never entered. (R. 163).

Though able to comprehend the substance of complainants' claims, from this oral exposition, the trial judge, in order that the cause might proceed in orderly fashion and with intelligible written pleadings, adhered to his previous order to replead and extended the time for filing such repleader to September 15, 1955. (R. 168).

On September 15, 1955, complainants, instead of repleading, filed an "amendment", setting up three additional counts, adding four additional paragraphs to the already verbose and prolix complaint. Complainants now had a complaint of 116 pages instead of the original 112.

Holding that this amendment "did not comply either with the letter or spirit" of his order to replead (R. 187), the trial judge again extended the time within which the order of May 6, 1955, might be complied with. This last extension was to November 7, 1955; but, the trial judge this time warned complainants that "no further extensions will be granted". (R. 195).

November 7 arrived, and complainants again ignored the trial judge and his orders with the same contemptuous silence as though the Congress had, in the interim, abolished his Court.

The trial judge was then in a position where he must, of necessity, take some punitive action in order to preserve

the dignity and respect due his Court and the orders issuing therefrom. The sanctions prescribed by Rule 41(b), *Federal Rules of Civil Procedure*, seemed to have been precisely the sanctions contemplated and promulgated by this Court to meet this exact situation. He took such action by dismissing the complainants' suit. (R. 199). In doing so, he acted also under a local rule of Court which provides for dismissal in the event a complainant fails to make ready his case for trial. (R. 200; 201). Since the order of dismissal did not "otherwise specify", the dismissal, as contemplated by the Rule, operated as an adjudication upon the merits.

The Court of Appeals reversed upon the ground that this is not a case where "mere prolixity and repetition" justifies "final dismissal" of the complaint.

Argument

The writ should be granted for the reason that, the Court of Appeals in reversing the judgment of the Trial Court has nullified both the intent and purport of Rules 8(a) and (e)(1) and 41(b), *Federal Rules of Civil Procedure*, promulgated by this Court for the governance of the District Courts.

It is abundantly clear that the Court of Appeals labors under the misapprehension that the trial court dismissed the suit solely because of the prolixity and redundancy of the complaint, for, in footnote 1, to the opinion, the court states: "The docket entries of the trial judge along with the whole course of the trial show, however, that the *sole dereliction* charged against plaintiffs was *non-observance* of Rule 8 * * *." (R. 215; Appendix

page 21, this Petition). And this view is epitomized in the next to the concluding sentence of the opinion: "There may be cases in which mere verbosity or repetition would justify final dismissal by a trial court, but this is not in our opinion such a case.[1] (Op. R. 219; Appendix "A", this Petition). No one, not even the trial judge, has ever said or contended that this *is* such a case, for the "non-observance of Rule 8" merely prompted the court's order to replead; but it was the continued, relentless and defiant refusal of complainants to comply with this order of the court (or to offer some reasonable explanation for their refusal to do so) which prompted the order of dismissal.

Stated a little differently, the dereliction on complainants' part which visited upon them the penalties or sanctions provided for in Rule 41(b) was *not* the "mere" verbosity, prolixity and redundancy of their original complaint, which the trial judge sought, through judicial processes, to have them correct; but, rather, it was complainants' continued, defiant, unrelenting and contemptuous attitude in utterly ignoring the trial judge and his order to replead which prompted the entry of the trial court's order of dismissal against which this appeal was taken.

That the trial judge correctly ordered a repleader, is tacitly admitted by the Court of Appeals, for it is patent from the opinion filed that the offensive pleading was not susceptible to intelligent analysis from within its four corners. Oral or written amplification was, admittedly

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[1] The Court of Appeals, apparently, does not look with as much disfavor on verbosity and repetition as this Court did when adopting Rule 8, for a reference to **"mere** verbosity or repetition" that is, **"nothing more than** verbosity or repetition" indicates a rather soft and conciliatory attitude and view toward such an infraction of the Rules. (Webster's New International Dictionary, 2nd Ed.).

necessary for an intelligent grasp of its needless complexities. This the Court of Appeals says in effect, for, in reaching its conclusions in the determination of the questions before it, it does not say that the pleadings are "plausible" on their face, or that they were characterized by the simplicity and directness contemplated by the Rules, but rather that "the *brief* before us sets out and explains plausibly the contents and purposes of each count and paragraph, together with the relationship thereto of the attached exhibits." (R. 213); Appendix page 19 this Petition). And necessity for the *oral* explanation to the trial judge of the objects and purposes of the suit—not determinable from the face of the pleadings standing alone—is recognized by the Court of Appeals when it says:

> "In this proposed order (the pre-trial order of September 1, 1955), the Court reduced to seven and defined the categories of relief it conceived plaintiffs to be seeking, based upon the complaint AND ORAL STATEMENTS MADE BY THE ATTORNEYS." (R. 213; Appendix page 19, this Petition)[2]

Granting that the pleadings were such as to require *oral* explanation to the trial judge and *written* explanation to the Court of Appeals by way of appellate brief, it would seem quite obvious that the offensive pleadings were not of such simplicity, conciseness or directness as to reasonably comply with the requirements of Rule 8. If the Rule, therefore, was designed by this Court to do anything other than consume printing paper and printer's ink, the trial judge was authorized—nay, required to order a repleader in conformity with the provisions of the Rule. Having so ordered, he must, in the very nature of

[2] Emphasis supplied throughout, unless otherwise noted.

judicial power, have the means, by the application of appropriate sanctions, to enforce the order so made. This Court had supplied that power of enforcement through adoption of Rule 41(b), which the trial judge duly invoked.

The order of dismissal was grounded, not upon the initial verbosity, prolixity and repetitiousness of the original complaint; but rather upon the obdurate and contemptuous attitude of complainants in utterly ignoring the trial judge and his orders, all made and entered in the course of orderly judicial proceedings.

While there can be no room for doubt from a reading of the opinion that the Court of Appeals was moved by such considerations, the severity of the penalty or sanction resulting from the order of dismissal can have no probative value in testing the propriety of the order itself, for Respondents, in their brief before the Court of Appeals, sought to justify their dereliction in refusing to replead by stating that they had "elected to stand upon their complaint".[3] (Appellant's Br. P. 5). Had the order been one of dismissal *with leave to amend* and had complainants in the face of such an order "elected to stand upon their complaint", refusing to amend, it is inconceivable that they then would complain about the severity of an order which carried the sanction of the present one, or that the Court of Appeals would sustain them in their complaint. The futility of a lesser penalty or sanction is thus made clear for they would not have amended had a lesser sanc-

[3] This explanation was offered by Respondents for the first time in their brief before the Court of Appeals. Before the trial judge, however, Respondents merely stood mute, and in stony silence ignored the order to replead.

tion been invoked. The situation in which they found themselves, therefore, was one of their own making and not one of the court's choosing.

This leniency with which the Court of Appeals views an infraction of Rule 8 with regard to conciseness, simplicity and directness is emphasized by its statement that "brevity" is merely a "desirable" attribute of a pleading (Opinion R. 216). It will no doubt come as a shock to the trial branch of the judiciary and constitute the basis of considerable frustration to learn that, as construed by the Court of Appeals in this case, the provisions of Rule 8 are *directory* only and not *mandatory* as they have previously been conceived to be.

It seems also that the Court of Appeals ascribes the same innocuous meaning to the Local Rules of the trial court as it does to the Federal Rules of Procedure prescribed by this court, for, as already noted, by footnote 1 to its opinion (R. 215), the Court of Appeals dismisses consideration of the impact of Local Rule 22 dealing with peremptory dismissal for willful failure or refusal to make ready a case for trial with the same nonchalance as it deals with Rules 8 and 41(b). Yet, a review of the decisions of both this court and other courts of appeal show that local rules where in aid of and supplementary to the general rules are given the same force and effect as statutory law. *Hicks v. Bekins Moving & Storage Co.*, 1940, 9 Cir. 115 F. 2d 406; *Galveston Dry Dock Construction Co. v. Standard Dredging Co.*, 1930, 2 Cir., 40 F. 2d 442, 444; *Washington-Southern Navigation Co. v. Balt. & Phil. Steamboat Co.*, 1923, 263 U.S. 629, 44 S. Ct. 220, 68 L. Ed. 480.

Were this a case, as suggested by the Court of Appeals, where "final dismissal" by the trial court was not justified because of "mere verbosity or repetition" in the pleadings, the reversal of the trial court's action by the Court of Appeals would do no violence to the applicable Rules of Civil Procedure adopted by this Court. Since, however, the dismissal was grounded upon the complainants' abject refusal to respect and to comply with an order of the trial judge duly made in the course of orderly judicial proceedings, the judgment of the Court of Appeals emasculates Rule 8 as well as the power of the trial judge, as provided for in Rule 41, to control proceedings in his court when faced with a defiant and obstreperous advocate.

The opinion of the Court of Appeals is not one that can be simply ignored, for its implications will have a serious impact upon the future application of the pertinent Rules of Procedure in other District Courts. Future attempts by trial judges to impose sanctions for refusal to obey orders duly entered will be seriously impaired unless the judgment of the Court of Appeals is reviewed and unless its determination of the issues involved is corrected by this Court, for a fair analysis of the Court of Appeals' opinion inevitably leaves one stunned by two appalling conclusions: (1) That a trial judge is without power, under Rule 8, to order a repleader unless the offensive pleadings are so verbose, prolix and repetitious as to require peremptory and final dismissal, and (2) if repleader is ordered because a pleading does, in fact, violate the "simple, concise and direct" provisions of Rule 8, the sanctions of Rule 41 cannot be imposed even though the of-

fending party refuses to comply with the Court's order, *unless* the original pleading is in such flagrant violation of the Rule as to require peremptory and final dismissal of the complaint. The vice of this holding lies in the fact that, for all practical intents and purposes, it virtually prohibits the entry of an order to replead, so long as a complaint states a cause of action—regardless of how ineptly it may be drawn and regardless of its viciousness in violating the "simple, concise and direct" requirements of the Rule.

It was, in fact, this erroneous conception of the question presented by the appeal of this case and the argument of the Respondents based thereon which led the Court of Appeals into error, for we note the following point or proposition urged in Respondents' brief before that Court:

> "THE ORDER OF DISMISSAL SHOULD BE REVERSED BECAUSE IT DOES NOT APPEAR TO A CERTAINTY THAT PLAINTIFFS ARE NOT ENTITLED TO ANY RELIEF." (Appellants' Br. P. 9).

And, apparently, it was a sympathetic view toward this argument that prompted the Court of Appeals to reverse the order of dismissal upon the ground that the case is not one which would "justify final dismissal" for "mere verbosity and repetition" (R. 219)—although, significantly, the Court did not advert to, discuss or pass upon the *real* ground upon which the trial court bottomed its order of dismissal: The willful and intransigent refusal of the complainants to abide by and comply with the trial court's order to replead in conformity to the requirements of

Rule 8, or, alternatively, to proffer an extenuating reason, excuse or ground for standing silent and adamant in such refusal.

If, perchance, the Court of Appeals actually meant that the trial court was not justified in ordering a repleader for "*mere* verbosity or repetition", then the error of that Court is compounded, for it must be assumed that this Court did not lightly draw or superficially consider these Rules or ignore the import and implications involved when promulgating them for the governance of the District Courts. By their adoption it was certainly contemplated that they would govern trial procedure, and if followed by the trial judge, that his action in doing so would, on appeal, be upheld.

We also question the rationale of the Court of Appeals regarding two other rather novel and unorthodox suggestions: (1) That the trial court could have (and, presumably *should have*) corrected the redundancy of complainants' pleading by striking *portions* of the complaint (Opinion R. 217), or, (2) Alternatively, that the trial court could have eliminated the necessity for *any* pleadings at all through the office of a pre-trial order. (Opinion R. 218). Either course would open a veritable Pandora Box for, to follow either alternative would improperly shift the responsibility for proper pleadings from the advocate to the trial judge; and both alternatives are contrary to presently expressed judicial thinking, for neither the trial court nor opposing counsel is required to sift the wheat from the chaff in an offensive pleading. *McCann v. Clark*, 1951, D.C. Cir., 191 Fed. 2d 476; *Renshaw v. Renshaw*, 1946, D.C. Cir. 1953 Fed. 2d 310.

The mere suggestion that the trial judge should have invoked one or the other of these two alternatives necessarily proceeds upon the postulate that the pleadings failed to meet the requirements of Rule 8, for, had the pleadings complied with the requirements of the Rule it would have been unnecessary for complainants to replead in their own behalf, or for the trial judge to replead for them by way of either alternative suggested by the Court of Appeals. What the Court of Appeals has actually said, therefore, is, that an order by the trial judge to replead, though fully justified and proper when the order therefor was entered, must be set aside and held for naught upon a litigant's adamant refusal to comply with the order and the burden of bringing the pleading into focus with the Rule is shifted from the shoulders of the litigant and his counsel to the shoulders of the trial judge. Such a holding is not only repugnant to every basic concept upon which the Rules of Procedure are predicated, but invites only chaos and confusion in the trial courts, rather than orderly dispatch of the business before them.

This case presents a question which far transcends the involvement of the parties to this suit, for if, by gradual erosion the Courts of Appeals can, by a mere flip of the pen whittle away at the true intent of the Rules—which is to simplify proceedings and facilitate the prompt and orderly dispatch of business in the trial courts—the Rules in the end will become an empty shell, devoid of substance, and the congested dockets of the trial tribunals will stand in cynical mockery to the studied attempt of the Bench and Bar to remedy an unsavory situation, the correction of which is and has been long overdue.

Conclusion

We conclude, therefore, that the judgment of the Court of Appeals remanding this cause for trial on the offensive pleadings should be reversed and the order of dismissal entered by the trial court should be sustained, for, to permit the judgment of the Court of Appeals to stand, would, indeed, create an anomalous situation, for brevity, clarity and conciseness are stressed in and permeate every rule emanating from this Court; and the penalties for infraction are consistently severe. Not only must pleadings in the trial tribunals be "simple, direct and concise", but all briefs and other filings in this Court must be the same. For example Rule 23, par. 4, of this Court provides: "The failure of petitioner to present with *accuracy, brevity and clearness* whatever is essential to a ready and adequate understanding of the points requiring consideration *will be sufficient reason for denying his petition;* while Rule 40, par. 5, in the same vein provides: "Briefs must be compact, logically arranged with proper headings, *concise* and free of *burdensome, irrelevant, immaterial* and scandalous matter. Briefs not complying with this paragraph *may be disregarded and stricken by the Court.*"

It would hardly be consistent for this Court to insist (as it does) upon full, fair, compliance with its own rules requiring brevity, clarity and conciseness, and, yet, deny that right to the trial bench with respect to the very rules that this Court has laid down for their guidance and control.

Wherefore, Petitioner prays that a writ of certiorari issue in this cause, directed to the Court of Appeals for the Fifth Circuit, at New Orleans, and that, upon hearing, in this Court, the judgment of the Court of Appeals be

set aside and a judgment here entered affirming the judgment of the District Court for the Southern District of Texas, Houston Division, the Honorable Ben C. Connally, presiding.

DILLARD BAKER
WALTER B. MORGAN
JOHN K. MEYER
FELIX A. RAYMER
Counsel for Petitioner

Of Counsel:
NELSON JONES
P. O. Box 2180,
Houston 1, Texas

ORIGINAL SIGNED

FELIX A. RAYMER

Certificate of Service

I, Felix A. Raymer, counsel for Petitioner and a member of the Bar of this Court certify that, in accordance with the provisions of Rule 33(1), I did, on this 5th day of July, A. D. 1957, serve opposing counsel with copies of this Petition by depositing same in a United States mail box, with first class postage, prepaid, addressed to Hon. George T. Barrow, Esperson Building, Houston 2, Texas.

ORIGINAL SIGNED

FELIX A. RAYMER

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15,918

EDWIN K. ATWOOD, ET AL., *Appellants*,

VERSUS

HUMBLE OIL & REFINING COMPANY, *Appellee*

Appeal from the United States District Court for the Southern District of Texas

(May 17, 1957.)

Before HUTCHESON, Chief Judge, and CAMERON and JONES, Circuit Judges.

CAMERON, Circuit Judge: This is an appeal from an order entered by the Court below of its own motion dismissing with prejudice appellants' (plaintiffs') complaint

for their failure to bring it into compliance with Rule 8(a), F.R.C.P. In the course of hearing Humble's (defendant, appellee) motion to dismiss for lack of jurisdiction over the person and the subject matter and for failure to join an indispensable party, together with its motion for a more definite statement under Rule 12(e), F.R.C.P., two pre-trial conferences were held. At the second the Court prepared, but did not enter, a pre-trial order defining the issues as it conceived them and requiring each party to take designated steps directed towards simplifying the case and narrowing the issues for trial. Plaintiff's assumed obligation to file an amended complaint under the terms of this order was not, in the judgment of the Trial Court, complied with. The only question we consider here is whether, after formulation of the issues in the pre-trial order, the Court properly dismissed the action with prejudice for plaintiffs' failure to file an amended complaint, which was satisfactory to the trial judge.

Plaintiffs began this action by filing a complaint against Humble Oil seeking, inter alia, enforcement of certain terms of two oil and gas leases or cancellation thereof, recovery of approximately $1,500,000.00 of accrued royalties allegedly held by Humble, the lessee, discovery of certain facts plaintiffs contend were in possession and control of Humble and other related relief.

The original complaint was made up of twenty-three counts occupying forty-six pages of the record, together with seventy-four pages of exhibits made a part thereof. The many theories of recovery advanced by plaintiffs and the relief sought evidently made the complaint appear

to the Trial Court complex and prolix. A careful reading of the complaint reveals, however, that plaintiffs had charted in detail the course they expected to follow in the prosecution of the various claims alleged, and the brief before us sets out and explains plausibly the contents and purposes of each count and paragraph, together with the relationship thereto of the attached exhibits.

Humble's response to this pleading was its motion to dismiss for lack of jurisdiction over the subject matter and person (based chiefly upon the asserted pendency of state court suits), and for failure to join an indispensable party, together with its motion for a more definite statement. At the first conference held May 6, 1955, for consideration of this motion the Court expressed its opinion verbally that plaintiffs' complaint did not comply with Rule 8(a), and that they should file an amended complaint which would comply with the Rule. A second pre-trial conference, called at plaintiffs instance, was held September 1, 1955, after which the Court informed the parties by letter that it had prepared a pre-trial order to carry into effect the results of the conference, and which, in the opinion of the Court, "accurately reflected the theories" under which plaintiffs desired to proceed in prosecuting the suit. The proposed order was forwarded to the parties for their approval, or for written reasons for any disapproval.

In this proposed order, the Court reduced to seven and defined the categories of relief it conceived plaintiffs to be seeking, based upon the complaint and oral statements made by the attorneys. It reiterated that "counsel for plaintiff were reminded . . . that the Court had [all

along] . . . entertained the view that the plaintiffs' complaint did not comply with Rule 8 in that it failed to set out by a short and plain statement the claims which the plaintiffs asserted, and the relief which they demanded . . ." It required Humble to furnish plaintiffs certain information whose discovery was sought in the complaint, upon receipt of which the Court understood plaintiffs would eliminate certain portions of the complaint; and it instructed plaintiffs to gain access to other facts sought by the complaint through "appropriate Federal Rules of Civil Procedure for discovery." And it ordered plaintiffs to file an amended complaint by September 15th.

Plaintiffs promptly wrote the trial judge making specific objections to the proposed order, and simultaneously filed three additional counts advising the judge that "we have undertaken to state as simply, clearly and concisely as possible the claims of plaintiffs as referred to in your proposed Pre-trial Order." The record contains copies of ensuing letters written to the Court by the parties following which the Court caused the Clerk to advise all counsel that the judge had made "the following notation on the calendar sheet . . .":

> "'The defendant having heretofore, by letter of September 19, 1955, furnished plaintiffs the information requested as a result of pretrial conference, the date within which plaintiffs may file an amended pleading in which to state clearly and concisely the nature of their cause of action and the relief sought, is extended to November 7, 1955. No further extensions will be granted.
>
> "'Clerk will notify counsel.'"

No action having been taken by any party, the Court had the Clerk advise all parties by letter of November 9th as follows:

> "The Honorable Ben C. Connally, Judge, has this date made the following notation on the Calendar Sheet, in the above styled action:
>
> "Counsel for plaintiffs having failed to amend his pleading herein to comply with Rule 8(a) requiring a clear, plain and concise statement of the nature of plaintiffs' cause of action and the relief sought, despite repeated orders of this Court to that effect and continued extensions of the period of time within which counsel was permitted to do so, the action is dismissed of the Court's own motion.
>
> "Clerk will notify counsel. Counsel for defendand will present order to this effect within five days."

Humble furnished an order drawn in line with the Court's ruling[1] which was duly entered and plaintiffs' motion to set it aside was denied. We do not think the Court was justified under the facts outlined to enter this order, which operates as an adjudication upon the merits. Rule 41(b) F.R.C.P.

We find ourselves unable to agree with the thinking of the Court below which led it to conclude early in the

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1 The order recites that the complaint was dismissed also under a rule of local practice providing for a dismissal if plaintiff "shall willfully fail or refuse to make ready the case to be placed on the Trial Calendar." The docket entries of the trial judge along with the whole course of the trial show, however, that the sole dereliction charged against plaintiffs was non-observance of Rule 8 and the decision of the case turns exclusively upon construction of that Rule as applied to the facts contained in the record.

proceedings that the complaint was definitely offensive to Rule 8(a) requiring "a short and plain statement of the claim." The Court did not amplify this conclusion, and we think that no convincing argument can be advanced that the statements in the complaint are not "plain," i.e. that they are not clear and understandable and not free of excessive embellishment. The whole criticism must be, therefore, that the complaint was not sufficiently "short,"—that the averments were not "simple, concise and direct," Rule 8(d).

Brevity is certainly desirable in order that the time of court and counsel may be conserved and the cost of printing minimized. But such considerations do not rank in importance with the right and the duty of a litigant to present his demands through counsel of his own choosing and in a style and form of expression which represent the attorney's honest effort to present the claims according to his own notions of their merits and their strong and weak points. In the mechanics of getting his client's claim before the court, the attorney is allowed a wide latitude,[2] and the claim is "whatever the plaintiff in good faith declares it to be;"[3] and in the functioning of the judicial process, the role of the advocate ranks in dignity and importance with that of the judge.

The latitude referred to is subject, of course, to the requirement that pleadings must conform to established principles as they are defined in applicable statutes, the Rules of Procedure, and authoritative court decisions con-

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2 Cf. Edwards v. du Pont, 5 Cir., 1950, 183 F. 2d 165, 168, and 71 C.J.S., Pleadings, Par. 6, p. 25.

3 Edwards v. du Pont, supra.

struing them. Normally, in an adversary proceeding the parties can be counted upon to keep their opponents straight and within the boundaries of these requirements.[4] At all events, it was the duty of the Court below to deal with the pleadings, if possible, in such a way "as to do substantial justice"[5] and to enable the parties to bring the merits of their controversy before the fact-finder for decision.

This the Court could have accomplished by measures as well adapted to the end desired and much less drastic than putting the plaintiffs entirely out of court. Was the complaint redundant, repetitious, argumentative, verbose? If so, the offending portions could be stricken. Did it contain scandalous or impertinent matter? These could be eliminated by like procedure. Rule 12(f), F.R.C.P. Humble evidently did not find these offensive elements in the complaint because it moved for amplification of portions of it rather than for abbreviation.

Moreover, the pre-trial procedures so carefully followed by the Court below afforded ample means by which the issues could be simplified and stripped of all phases which the Court did not consider properly within the ambit of the suit. In fact, after extensive pre-trial hear-

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4 Cf. Cool v. International Shoe Co., 8 Cir., 1944, 142 F. 2d 318, 320; Renshaw v. Reashaw, D.C. Cir., 1946, 143 F. 2d 310; McCoy v. Providence Journal Co., 1 Cir., 1951, 190 F. 2d 760, 766, and Sunbeam Corp. v. Payless Drug Stores, D.C. Cal., 1953, 113 F. Supp. 31, 45.

5 Rule 8(f) F.R.C.P., thus construed by the Supreme Court in Maty v. Grasselli Chemical Co., 1938, 303 U.S. 197, 200:

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies by the litigants. They should not raise barriers which prevent the achievement of that end."

And see 2 Moore's Federal Practice, 2d Ed., p. 1711.

ings the Court reduced the issues it understood to be embraced within the complaint to seven, which it memorialized by a proposed order occupying but six pages in the record. Rule 16 F.R.C.P. empowered the Court to enter this order or one like it with such effect as would have controlled "the subsequent course of the action."[6] But the Court did not enter the order it had so carefully worked out and did not pass specifically upon the objections plaintiffs addressed in writing to the order as drawn and did not specify wherein the additional counts they submitted failed to meet the Court's views.

The pleadings, the orders of the Court, and the arguments reflect that the issues involved in this case are many and varied, the amount of money sought is a very large one, the leases involved are long and complicated, and various phases of the cases have been and are being litigated in other courts, and at best a complaint of some

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[6] And see 3 Moore's Federal Practice, 2d Ed., Par. 16.1 and 16.19, pp. 1127-28; and Fowler v. Crown Zellerbach Corp., 9 Cir., 1947, 163 F. 2d 773; Ringling Bros.-Barnum & Bailey Combined Shows v. Olvera, 9 Cir., 1941, 119 F. 2d 583; Owen v. Schwartz, D.C. Cir., 1949, 177 F. 2d 641, 644; Fernandez v. United Food Co., 2 Cir., 1952, 200 F. 2d 414; Sinclair Refining Co. v. Howell, 5 Cir., 1955, 222 F. 2d 637; and Walker v. West Coast Fast Freight, Inc., 9 Cir., 1956, 233 F. 2d 939.

Other pertinent language from Moore's Federal Practice, Par. 16.19, pp. 1127-8 provides: "While Rule 16 does not in terms provide that the pre-trial order supersedes the pleadings, and indicates that at times it will not, nevertheless in practice the order sometimes has that effect." Cf. Curto v. International Longshoremen's and Warehousemen's Union, D.C. Ore., 1952, 107 F. Supp. 805, 809.

Cf., also, the statement from Moore, Par. 16.12, p. 1118: "Since the pre-trial order controls the future course of the action, however, failure to amend the pleadings to reflect the issues stated in the order should be immaterial." Citing Low v. Davidson Mfg. Co., 1940, 7 Cir., 113 F. 2d 361. The pre-trial order achieved this result in Owen v. Schwartz, **supra.**

length would be required to get all of the contentions presented by such a situation before the Court:[7] "What is a 'short and plain' statement depends of course on the circumstances of the case." 2 Moore's Federal Practice, 2d Ed., p. 1652. There may be cases in which mere verbosity or repetition would justify final dismissal by a trial court, but this is not, in our opinion, such a case. For a trial in conformity with the views here expressed, the order of the Court below is set aside and the cause remanded.

REVERSED AND REMANDED.

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[7] We do not pass on the Court's order that plaintiffs proceed under the discovery provisions of the Rules rather than by their complaint to bring before the Court facts alleged to be peculiarly within defendant's knowledge. The Court can, by interlocutory orders, deal with this phase of the problem.

A true copy
Test:

EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

APPENDIX "B"

Judgment

Extract from the Minutes of May 17, 1957

EDWIN K. ATWOOD, ET AL.,

No. 15918 versus

HUMBLE OIL & REFINING COMPANY

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for a trial in conformity with views expressed in the opinion of this Court;

It is further ordered and adjudged that the appellee, Humble Oil & Refining Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

Office - Supreme Court U.S.
FILED
SEP 23 1957
JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 266

HUMBLE OIL & REFINING COMPANY, *Petitioner*

v.

EDWIN K. ATWOOD, ET AL., *Respondents*

PETITIONER'S SUPPLEMENTAL ARGUMENT IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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IN THE

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No. 266

HUMBLE OIL & REFINING COMPANY, *Petitioner*

v.

EDWIN K. ATWOOD, ET AL., *Respondents*

PETITIONER'S SUPPLEMENTAL ARGUMENT IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

It is quite patent from the argument filed by Respondents that they appreciate to the fullest extent the tenuous position they occupy before this Court if Petitioner's charges of "contemptuous silence" against and "obstreperous refusal" to comply with the trial court's order to replead be well founded and find support in the record. As against the charges of contemptuous attitude on the part of Respondents with respect to the trial court's order to replead Respondents' only reply seems to be (1) that their position before the trial court throughout the proceedings was that

their pleadings were in compliance with the applicable Rules of Civil Procedure, and (2) that by filing the *amendment* of September 15, 1957 they evidenced a "courteous" compliance with the trial court's order. As Petitioner views Respondents' position, if either or both of the above contentions be unsupported by the record, Respondents for all intents and purposes concede the propriety of granting the writ petitioned for.

An analysis of the record is all that is needed to support Petitioner's charges and to refute Respondents' contentions. The order of dismissal contains the following recitation:

> "Thereafter,* *at plaintiffs' request, and without objection*, the time for filing such repleader was extended by the Cour to August 15, 1955, *at which time, plaintiffs having failed to comply*, counsel were notified by the clerk, at the Court's direction, that unless plaintiffs had complied with the order to replead by September 6, 1955, a motion to dismiss would be entertained by the Court." (R. 200, second par.)

Plaintiffs' request for the extension of time within which to replead as noted by the Court in the above extract from the order of dismissal is shown by letter from plaintiffs' counsel to the trial judge at page 157 of the Record and it will be noted that neither the letter from counsel to the judge nor the extract from the order of dismissal shows any contention on the plaintiffs' part that the pleadings then on file were sufficient under the Rules or that plaintiffs intended to "stand" on the pleadings then before the Court. *Additional time* and *time alone* is what plain-

*Viz, after the first pre-trial conference of May 6, 1955 at which conference the Court entered his order requiring Respondents to replead

tiffs then sought and every indication then given to the Court pointed to an intention to replead if the additional time sought for compliance with the Court's order was granted.

Thereafter a second pre-trial conference was held, at which time:

> "Counsel for plaintiffs were reminded of the fact that on May 6, 1955 . . . the Court had entertained the view that the plaintiffs' complaint did not comply with Rule 8 in that it failed to set out by a short and plain statement the claims which the plaintiffs asserted, and the relief which they demanded; and that plaintiffs had been ordered to replead by August 1, 1955, which time had been extended at plaintiffs' request to August 15, and had been further extended at plaintiffs' request to the date of the pre-trial hearing." (Excerpt from proposed pre-trial order which was not entered, R. 163.)

The Court concluded this order by again extending the time to replead, this time until September 15, 1955. (R. 168).

Respondents filed extensive objections to this proposed pre-trial order (R. 169-172) but not one word, syllable or phrase appears in these objections indicating to the Court that Respondents contended that their pleadings were in compliance with Rule 8, or that they considered the Court in error in ordering a repleader of the case, or that they intended to stand upon their Complaint as then on file. In fact the record reflects just the contrary, for the day following the filing of their objections to the pre-trial order, that is, on September 15, 1955 plaintiffs wrote a letter to the Judge advising him that they had filed

their "Amendment"—aiding to their Complaint—and, somewhat apologetically stated that "the Amendment we have filed is the most we can do *at this time*," (R. 173), implying that, given additional time and additional information they would attempt compliance with the Court's previous and somewhat numerous orders to replead. And, significantly, it will be noted that in this letter last referred to no contention is made that the amendment is in compliance with the order to replead—the amendment was just "the most we can do at this time".

Thereafter (on September 21, 1955), the Court advised counsel that, in his opinion, this "so-called amendment filed by plaintiffs does not comply either with the letter or spirit" of the order he had theretofore entered in the case. (R. 187.) And, again significantly, though Respondents had shown a marked penchant for writing letters of objection to the Court, the record is devoid of any showing of disagreement with the Court regarding the views he entertained about the "so-called" amendment to which he referred in his letter of September 21. Apparently, at that time Respondents considered his order to replead as well founded.

The next recordation of events is a notification by the clerk, dated October 25, 1955, notifying counsel that the following calendar notation had been entered by the Court:

> ". . . the date within which plaintiffs may file an amended pleading in which to state clearly and concisely the nature of their cause and the relief sought, is extended to November 7, 1955. *No further extensions will be granted.*" (R. 195.)

Again, after the receipt of this notification not one word of objection was voiced by Respondents, not one claim was made to the Court that the "Amendment", of September 15, 1955 constituted a compliance with the order to replead; and most significantly of all, not one word is shown in the record evidencing that Respondents advised the Court that they considered their pleadings sufficiently in compliance with Rule 8 that they had elected to "stand" on the pleadings then on file.

November 7th came and passed with no attempt whatever to comply with the calendar entry next above noted, and with no attempt whatever to explain, justify or excuse the non-action on Respondents' part. In an attempt to refute Petitioner's charge of "contemptuous silence" and "standing mute and in stony silence" Respondents now represent to this Court that "ten days *before* the order of dismissal was entered" they filed a motion in which they informed the Court that they relied upon their existing pleadings as being in compliance with Rule 8. (See Respondents' Brief, last paragraph, page 8.) Respondents cite Record, page 206, in support of this statement. By referring to page 206 of the Record it will be noted first, that the motion Respondents referred to was *never* filed, as no file mark is noted by the clerk. It will be noted secondly that plaintiffs captioned their motion "Plaintiffs' Motion to *Set Aside, Alter* or *Amend* Order of Dismissal". And finally, it will be noted from the first paragraph of the motion that plaintiffs seek to have the Court:

> " . . . set aside, alter or amend its order of dismissal *heretofore entered* . . ." (R. 206.)

It is just a little difficult for Petitioner to understand how an order of dismissal could be set aside, altered or amended ten days *before* it is entered. It is just as difficult to understand how a motion seeking to accomplish that purpose could be filed ten days *before* the entry of such an order. The answer is, of course, that the order had been, as the motion itself stated, *theretofore* entered, and Petitioner rather suspects that Respondents' present representation to this Court that the motion was filed *before* such entry is a sort of oblique attempt on Respondents' part to lend credence to their bitter attack (Respondents' Brief, page 8) on Petitioner's statement (Pet. footnote, page 9) that Respondents for the first time, in their brief before the Court of Appeals, made it known that they had "elected to stand upon their complaint," while before the Trial Court they had stood mute and in stony silence had ignored the order to replead.

Not only is the above representation that Respondents made known to the Court their contention of "Compliance" *before* entry of the order of dismissal directly in conflict with the record, but it should also be noted that *Respondents have made no attempt whatever* in their brief before this Court to explain or justify in any degree their action—or non-action—in failing and refusing to replead by August 15, 1955, as ordered by the Court in the order extending the time therefor, entered on July 5, 1955. (R. 159). Nor do they offer any reason, excuse or justification for their action—or non-action—in "standing mute" and in "stony silence" against such order, necessitating the following entry on the Court's Motion Calendar on August 23, 1955:

> "It having been called to my attention that plaintiff has failed to file an amended petition originally set for August 1st, or within time as extended to August 15th, a motion to dismiss the action will be entertained on September 6, 1955, unless the amendment be filed before this date." (R. 161.)

The record reflects, from beginning to end that the trial court was dealing constantly with an obstreperous attorney, who, as Petitioner has already stated in its Petition, was ignoring every order entered by the trial court the same as though the Congress had abolished the Court in which those orders were being made and entered.

Respondents' position that their "Amendment" of September 15, 1955 constituted a full and "courteous" compliance with the trial court's order to replead is even more difficult to comprehend. After quoting from Petitioner's charges that Respondents "stood mute" and refused to replead and that Respondents were guilty of "defiant and obstreperous" conduct, Respondents say:

> "The foregoing statements are wholly unjustified. The record conclusively shows, not only that Respondents sought and obtained a pre-trial conference with the trial judge *in an effort to straighten out the pleadings*, but that, far from refusing to replead, they actually did replead by filing an amendment to their original complaint which was founded upon the trial judge's proposed 'pre-trial order' in that it actually used his own language in stating Respondents' claims, although *the amendment was even more concise* (being several pages shorter) *than the trial court's statement of the same claims* in his proposed 'pre-trial order'." (Respondents' Brief, par. 2, page 8.)

Let us analyse this remarkable statement. First, it constitutes an admission that something was seriously wrong with the original complaint, for, if not, why would Respondents feel it necessary to seek and obtain a pre-trial conference in an effort to *"straighten out the pleadings"*? If the pleadings were in conformity with Rule 8, as Respondents now claim them to be they did not need to be "straightened out". If they were in violation of Rule 8, as the trial judge had held them to be they did need to be "straightened out".

And how do Respondents *now* say they "straightened out" these objectionable pleadings? By filing *additional* pleadings, which they say in their brief, page 6, "compressed all of Respondents' principal claims into four pages," and which they further say, page 8, of their brief was "even more concise (being several pages shorter) than the trial court's statement of the same claims"! If the trial judge in his proposed pre-trial order was able to "compress" the averments of Respondents' 112 page original complaint into 6 pages, and Respondents were able to further "compress" the trial judge's already "compressed" statement of Respondents' claims into an "even more concise" statement consisting of only four pages (Respondents' Brief, page 8) it would seem that Respondents, by their own admissions fully confirm the trial court's indictment of "redundancy" and "verbosity" against the original complaint beyond the peradventure of the slightest doubt. Furthermore, if these *additional* counts and paragraphs merely *restated*, in "compressed" form, the claims set forth in the prior 112 pages of the original complaint, it seems obvious to Petitioner that Respondents must admit that their pleadings in the *amended* form met every definition which could be given of "repetitiousness" and "verbosity".

Respondents thus find themselves in a most peculiar position before this Court, for they are now saying that they pleaded their claims twice in the trial court—once with such redundancy, prolixity and verbosity that they needed a pre-trial conference to straighten them out, and once concisely, by "compressing" the 112 page redundant, prolix and verbose complaint into only a four page "Amendment" —leaving the whole of the two pleadings—the good and the bad—still live and before the Court. With this we agree. With this the trial judge agreed. And it was this very condition of their pleadings which the trial judge held, determined and decreed constituted a violation of Rule 8 of the Rules of Civil Procedure; and it was this very condition of their pleadings which Respondents determinedly refused to correct. It was this determined refusal on their part which brought upon them the order of dismissal and the judicial sanctions of which they now so bitterly complain.

If their present contention be true that the *whole* of their principal claims was fully set forth in the four pages of their *addition* to the original complaint, why were the obsolete 112 pages of the original complaint left as live pleadings before the Court? If the amendment of only four pages was sufficient unto itself and was "even more concise" in setting forth the principal claims asserted and the relief demanded than the trial judge's analysis of Respondents' suit, is Respondents' assertion that the amendment "straightened out" the confused condition of their pleading a logical deduction to reach when the confused 112-page original pleading was still before the Court with all of its complexities, verbosity and redundancy? If Respond-

ents' position before this Court be sound and be given credence, then fair treatment of the trial judge and his orders would have dictated the filing of the averments in the so-called amendment *in place and in lieu* of the original confused and complex complaint and not as an *addition* to it—for the *addition* merely added to the already confused condition of the pleading which admittedly needed some clarification through a "straightening out" procedure. And, had this been done, Respondents, by their own admission would have had their claims adequately before the Court and in full compliance with Rule 8, the provisions of which the trial judge was almost in desperation seeking to enforce.

Petitioner submits, therefore, that Respondents, by their own admissions, have shown that the trial judge properly ordered the repleader of a complaint which was in flagrant violation of Rule 8 of the *Federal Rules of Civil Procedure*, and that, as a consequence of their defiant attitude of refusal to comply with the order to replead they invited the sanctions provided for in Rule 41. Petitioner relies, threrefore, on the grant of relief as prayed for in its Petition on file herein.

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Certificate of Service

I, Felix A. Raymer, counsel for Petitioner and a member of the Bar of this Court, certify that, in accordance with the provisions of Rule 33(1) I did, on this 19th day of September A. D. 1957 serve opposing counsel with adequate copies of this supplemental argument by depositing same in the United States mails with adequate first class postage prepaid to assure delivery, addressed to Honorable David Bland, Bank of the Southwest Building, Houston 2, Texas.

ORIGINAL SIGNED: FELIX A. RAYMER

FELIX A. RAYMER

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JOHN T. ...erk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 266

HUMBLE OIL & REFINING COMPANY,

Petitioner,

vs.

EDWIN K. ATWOOD et al,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The opinion of the United States Court of Appeals for the Fifth Circuit in this case is reported at 243 F. (2d) 885 (and is reprinted as Appendix "A" to the Petition for Certiorari).

In December of 1954, Respondents brought this action in the United States District Court for the Southern District of Texas, Houston Division, against Humble Oil & Refining Company, Petitioner. Respondents are Edwin K. Atwood, Alice B. Atwood, Richard W. Atwood, *non compos mentis*, by Alice B. Atwood as his next friend and conservatrix, Alice B. Atwood, as Conservatrix of the Estate of Richard W. Atwood, N.C.M., Thomas H. Fisher and Ruth P. Fisher. There was diversity of citizenship and the necessary jurisdictional amount was involved.

As plaintiffs in this action, Respondents sought to enforce their rights to certain mineral interests in the State of Texas of a value of many millions of dollars under an unusual (typewritten) mineral lease made in September, 1933 (25 pages in length) (Tr. 55-80), and also their rights under three unusual subsidiary (typewritten) agreements between the same parties forming part of the same mineral transaction (5, 4 and 6 pages in length, respectively) (Tr. 102-7, 112-121). Not only were these unusual typewritten documents long and complicated, but the issues raised in the Complaint were many and varied. As the Court of Appeals said in its opinion (Appendix "A" to the Petition, p. 24):

> "The pleadings, the orders of the [trial] Court, and the arguments reflect that the issues involved in this case are many and varied, the amount of money sought is a very large one, the leases involved are long and complicated, and various phases of the cases have been and are being litigated in other courts, and at best a complaint of some length would be required to get all of the contentions presented by such a situation before the Court."

The Complaint as originally filed comprised 23 separate Counts, with an average of *less than two pages of the Complaint for each Count* (Tr. 11-54). That the Com-

plaint fully complied with Rule 8 of the Federal Rules appears from the following brief summary of these 23 separate *Counts*.

Count One pleaded a statutory cause of action in trespass to try title under Texas law, the entire claim comprising *only 4 lines* (exclusive of the legal description of the real estate), followed by a prayer for judgment for title to and possession of the real estate (minerals); for disclosure and discovery of a more accurate description thereof; for costs; and for general relief (Tr. 11-16).

Count Two of the Complaint, after incorporating a portion of *Count One* pursuant to Federal Rule 10(c), pleaded a claim for the reasonable rental value of the real estate *in only 10 lines*, to which was appended a 6-line prayer for judgment for such damages; for costs; and for general relief (Tr. 16).

Count Three pleaded a claim for damages under Federal Rule 8(a) and 9(g) *in only 11 lines*, followed by a 4-line prayer for judgment; for costs; and for general relief (Tr. 16-17).

Counts Four, Twelve and *Twenty* seeking declaratory judgments under Federal Rule 57 and Title 28, Sections 2201-2 of the United States Code were somewhat longer because the Code expressly requires the plaintiff in declaratory judgment cases to show that there was an "actual controversy" between the parties. The entire claim in *Count Four* was set forth in 7 numbered paragraphs, followed by a short prayer for a declaratory judgment or decree settling the alleged controversies; for costs; and for general relief (Tr. 17-21); the entire claim in *Count Twelve* was set forth in 4 pages, which included the prayer for relief (Tr. 35-9); and the entire claim in *Count Twenty* comprised 4 paragraphs, which with the prayer totalled less than 3½ pages (Tr. 48-52).

Counts Five, Seven and *Nineteen* all sought discovery from the defendant (Petitioner here). These three *Counts* were embodied in less than 3 pages of the Complaint (Tr. 21-2, 23-4, 48).

Count Six sought the recovery of actual physical minerals or their money value, and was set forth in a little more than 1 page of the Complaint (Tr. 22-3).

Count Eight was the longest *Count* in the entire pleading embodying 4 pages, together with an added page for the prayer (Tr. 24-9).

Count Nine presented a claim for an express, resulting or constructive trust, and comprised with the prayer less than 2½ pages of the Complaint (Tr. 30-2).

Counts Ten and *Eleven* sought to have the ownership of the minerals extracted from Respondents' real estate adjudicated to them as co-owners, and embodied 2 pages and 1 page, respectively (Tr. 32-5).

Count Thirteen sought specific performance, and with the prayer comprised less than 2 pages of the Complaint (Tr. 39-41).

Count Fourteen sought to remove two recorded instruments as clouds upon the title to Respondents' minerals, and was embodied in 1½ pages of the Complaint (Tr. 41-2).

Count Fifteen of the Complaint comprised 5 lines, supplemented by a prayer, and sought to quiet Respondents' title to their mineral interests (Tr. 43).

Count Sixteen claimed Respondents' royalty share of their minerals under a separate instrument; and comprised a single page of the Complaint (Tr. 43-4).

Count Seventeen sought cancellation of the mineral lease and one of the supplementary contracts, and comprised less than 2½ pages of the Complaint, including the prayer (Tr. 44-7).

Count Eighteen claimed ordinary and special damages for breach of contract, and comprised less than 1 page of the Complaint (Tr. 47).

Count Twenty-one claimed special damages under another mineral lease, and comprised less than 1 page of the Complaint, including the prayer (Tr. 52).

Count Twenty-two sought cancellation of the two mineral leases and supporting instruments, and was embodied on a single page of the Complaint, including the prayer (Tr. 53).

Count Twenty-three sought legal interest upon the moneys claimed, and comprised ½ page of the Complaint (Tr. 54).

It would be extremely difficult to state the foregoing claims more simply, concisely or directly. In fact, the entire pleading is a model for succinctness, clarity, simplicity and conciseness.

Following a pre-trial conference between counsel for the parties and the trial judge, the latter prepared a so-called "pre-trial order", which was never actually entered but in which the trial judge attempted to summarize a part at least of Respondents' claims (Tr. 163-9).

Within the time granted by the trial court for the amendment to the original Complaint, Respondents repleaded by filing three additional *Counts*, to-wit: *Counts Twenty-four, Twenty-five* and *Twenty-six*. These three additional *Counts* (Tr. 174-7) did *not* merely add "four additional

paragraphs to the already verbose and prolix complaint", as erroneously stated in the Petition (p. 5). On the contrary, these three additional *Counts* compressed all of Respondents' principal claims into four pages, using in substantial part the very language proposed by the trial judge in his so-called "pre-trial order", which embodied six pages.

After the amendment to the Complaint was filed with leave of the trial court, no further pre-trial conferences or court hearings took place. The judgment of the trial court dismissed plaintiffs' entire Complaint with prejudice (Tr. 199-201); and it was from this order that the appeal was taken to the Court of Appeals (Tr. 207-8).

The Court of Appeals correctly held that the Complaint did *not* violate Rule 8(a) of the Federal Rules. The Court said (Appendix "A", p. 21):

> "We find ourselves unable to agree with the thinking of the Court below which led it to conclude early in the proceedings that the complaint was definitely offensive to Rule 8(a) requiring 'a short and plain statement of the claim'. The Court did not amplify this conclusion, and we think that no convincing argument can be advanced that the statements in the complaint are not 'plain', *i.e.*, that they are not clear and understandable and not free of excessive embellishment.
>
> * * *
>
> . . . There may be cases in which mere verbosity or repetition would justify final dismissal by a trial court, but this is not, in our opinion, such a case." (p. 25, Appendix "A".)

This Court will not go behind the holding of the Court of Appeals that the Complaint as amended fully conformed with Rule 8(a) and (e)(1) of the Federal Rules, especially since there is no showing whatsoever in the

Petition that the Court of Appeals' holding was incorrect. The unsupported statements in the Petition that the Complaint contained an "intricate web of contingent relief, cross-references, bills of discovery, counts and paragraphs" (p. 5), and was "verbose and prolix" (p. 5), are wholly without merit. The statements in the Petition (p. 7) that "oral or written amplification of the Complaint was admittedly necessary for an intelligent grasp of its needless complexities", and that this is "tacitly admitted by the Court of Appeals" (p. 7), or that "the objects and purposes of the suit were not determinable from the face of the pleadings standing alone" without oral explanation (p. 8), and that "it would seem quite obvious that the offensive pleadings (Complaint and amendment thereto) were not of such simplicity, conciseness or directness as to reasonably comply with the requirements of Rule 8" (p. 8) are all equally without merit.

The Petition repeatedly, but erroneously, states that Respondents treated the trial court with "contemptuous silence" (p. 5) and were guilty of a "continued defiant, unrelenting and contemptuous attitude in utterly ignoring the trial judge and his order to replead" (p. 7). Again, the Petition erroneously says that Respondents were guilty of an "obdurate and contemptuous attitude . . . in utterly ignoring the trial judge and his orders" (p. 9), because "Respondents merely stood mute, and in stony silence ignored the order to replead" (p. 9, footnote).

This same charge is repeated, *e.g.*, that Respondents "stood mute" and refused to replead, which Petitioner says constituted "defiant and obstreperous" conduct (p. 11). As Petitioner puts it, (p. 12-13), "The wilful and intransigent refusal of the complainants to abide by and comply with the trial court's order to replead in conformity to the requirements of Rule 8, or, alternatively to

proffer an extenuating reason, excuse or ground for standing silent and adamant in such refusal" was "the *real* ground upon which the trial court bottomed its order of dismissal" (italics from the Petition, p. 12).

The foregoing statements are wholly unjustified. The record conclusively shows, not only that Respondents sought and obtained a pre-trial conference with the trial judge in the effort to straighten out the pleadings, but that, far from refusing to replead, they actually did replead by filing an amendment to their original Complaint which was founded upon the trial judge's proposed "pre-trial order" in that it actually used his own language in stating Respondents' claims, although the amendment was even more concise (being several pages shorter) than the trial court's statement of the same claims in his proposed "pre-trial order." (Tr. 163-9, 174-6).

In other words, far from treating the trial judge contemptuously, Respondents actually did their utmost to conform with the trial judge's proposed "pre-trial order" by courteously seeking to state Respondents' claims more simply in their amendment, and in proper legal fashion informed the trial court that Respondents were convinced that their Complaint did not violate Rule 8(a) of the Federal Rules by filing a motion squarely relying upon Rule 8(a) ten days before the order of dismissal was entered (Tr. 206). The statement in the Petition (p. 9 and footnote) that Respondents "elected to stand upon their Complaint" "for the first time in their brief before the Court of Appeals" and refused to amend is entirely untrue, as Respondents' motion (Tr. 206) conclusively shows.

JURISDICTION OF THIS COURT

Petitioner maintains (p. 2) that the question presented for review is within the scope of Rule 19(b) of the Supreme Court.

As we show in the argument below, neither has Petitioner raised nor has the Court of Appeals decided an important question of Federal law which should be settled by this Court; nor is there any showing in the Petition that the Court of Appeals has departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the trial court as to call for an exercise of this Court's power of supervision.

THE QUESTION PRESENTED FOR REVIEW

The question presented for review (p. 2) has nothing to do with this appeal because the Court of Appeals did *not* hold "that the Trial Judge was without power . . . to order a repleader, unless the complaint was so prolix, verbose and repetitious as to require peremptory and final dismissal of the suit."

What the Court of Appeals actually held was that the Complaint was neither prolix, verbose nor repetitious and therefore did not violate Rule 8(a) and (e)(1) of the Federal Rules; and that therefore under Rule 41 the trial court had no power or discretion to dismiss Respondents' Complaint with prejudice.

Stated more succinctly, "the question presented for review" by Petitioner is not a question which has anything to do with this appeal nor with the Court of Appeals' true holding therein, but purports to raise instead an abstract question of Federal law which has nothing to do

with this appeal, and which at most constitutes a mere ground for an attack upon the *language* of the Court of Appeals, not upon the substantive merits of its decision.

Even if the question which is presented by Petitioner correctly construed the Court of Appeals' holding, nevertheless the answer to this question is so obviously in the negative as not to warrant this Court's time and attention thereto, as we show in the argument below.

ARGUMENT

The question presented by the Petitioner for review might more accurately be re-stated as follows:

> Does a trial court have power under Rule 41(b) of the Federal Rules to dismiss with prejudice a cause of action based upon a complaint which is neither prolix, verbose nor repetitious and which in no other manner fails to comply with Rule 8(a) and (e)(1)?

In other words, may a trial judge dismiss with prejudice a complainant's action where the complaint is simple, concise and direct and contains a short and plain statement of the claim showing that the Plaintiff is entitled to relief, merely because the trial judge, upon his own voluntary motion (Tr. 200), prefers to have the complaint amended in some other form to suit his preferences?

There can be no doubt as to the answer to the question presented to this Court for review, whether in the form in which it is stated in the Petition or in this answering brief above. The Court of Appeals, recognizing that brevity in pleadings is desirable so that time and printing costs may be "minimized", nevertheless recognized that "the right and the duty of a litigant to present his demands through counsel of his own choosing and in a style and form of expression which reflect the attorney's honest effort to present the claims according to his own notions of their merits and their strong and weak points" are of greater importance, and that "in the functioning of the judicial process, the role of the advocate ranks in dignity and importance to that of the judge" (Appendix "A", p. 2).

This is another way of saying that a trial judge should decide cases, and not draft pleadings for litigants in his court.

Petitioner takes a different view. Apparently it is Petitioner's conception (p. 14) that unless litigants and their counsel shall comply with every whim and caprice of the trial judge as to their manner of pleading, the result is that "the burden of bringing the pleading into focus with the Rule is shifted from the shoulders of the litigant and his counsel to the shoulders of the trial judge", and that this "is not only repugnant to every basic conception upon which the Rules of Procedure are predicated, but invites only chaos and confusion in the trial courts, rather than orderly dispatch of the business before them" (Petition p. 14).

In other words, it is Petitioner's conception that unless the litigants permit the trial judge to re-write their pleadings for them, there will be "chaos and confusion" in the trial courts, and that the trial judge will have to shoulder "the burden of bringing the pleading into focus", *i.e.*, to make it conform with Rule 8.

Actually, it is Petitioner's conception which would create "chaos and confusion" in the trial courts, for if the trial judge is voluntarily "on his own motion" to assume "the burden" of needlessly compelling litigants who fully comply (as the question presented by Petitioner assumes) with Rule 8 of the Federal Rules, then surely there will be "chaos and confusion" in the trial courts, which can only be avoided by adherence to the Court of Appeals' holding in this case.

Practically the whole of Petitioner's argument is based upon the false assumption that Respondents, as plaintiffs in the trial court, were contemptuous of the trial judge's efforts to compel them to re-plead, even though their pleading was entirely proper, by standing mute after once amending their Complaint in a straightforward and sincere

effort to satisfy the trial judge, as is shown by the fact that Respondents actually adopted in their amendment to the Complaint the trial judge's proposed form of suggested pleading as outlined in his proposed "pre-trial order."

It is transparent that all the charges about Respondents' alleged "continued, defiant, unrelenting and contemptuous attitude", which Petitioner calls "obdurate and contemptuous", "willful and intransigent", "unsavory and offensive", all of which charges are without the slightest support in and are directly contrary to the record, are without any justification. The Court of Appeals thrice pointed in its opinion to the fact that Petitioner, far from objecting to the Complaint on the ground of verbosity, moved for its *amplification* rather than for its abbreviation (App. "A", p. 18, 19, 23). We quote (p. 23):

> "Humble evidently did not find these offensive elements in the complaint because it moved for amplification of portions of it rather than for abbreviation."

As for Respondents' good faith in the trial court, the Court of Appeals' opinion shows that Respondents, as soon as they received the proposed "pre-trial order", complied with the trial court's request for a repleader, at the same time showing the trial court that Respondents' three additional *Counts* "state as simply, clearly and concisely as possible the claims of plaintiffs as referred to in your [the trial Court's] proposed Pre-trial Order." (App. "A", p. 20.)

CONCLUSION

In the effort to show that the Court of Appeals' decision in this case would have an "appalling" effect upon the "future application of the pertinent Rules of Procedure in other District Courts", and thus to give some dignity to this Petition, Petitioner argues (p. 11) that the Court of Appeals has "implied" that the trial judge is "without power, under Rule 8, to order a repleader unless the offensive pleadings are so verbose, prolix and repetitious as to require peremptory and final dismissal" of the entire litigation with prejudice.

As we have said above, even if this were one of the "implications" of the Court of Appeals' opinion, which is a quarrel with the *language* of the opinion and *not* its substance, it would be the adoption of Petitioner's theory which would be truly "appalling". For it plainly appears from the Petition that it is based upon the contention that a trial judge shall have the power, upon his own voluntary motion (as in the case at bar), to compel litigants to replead their causes of action, even though the litigant's pleadings fully comply with Rule 8 of the Federal Rules, and the opposing party seeks their amplification, not their abreviation.

We have shown above, however, that this question has nothing to do with the decision in the case at bar. All that was decided by the Court of Appeals was that Respondents' Complaint, as amended, in this case did comply with Rule 8, for the reason that it was simple, concise and direct and contained a short and plain statement of Respondents' claims showing that they were entitled to relief, as the Court of Appeals' opinion expressly holds. No contrary showing is contained in the Petition.

In the face of this holding, is this Court going to decide an abstract question of procedure, merely because Petitioner finds it was raised by "implication" in the Court of Appeals' opinion?

It is concluded that the decision and judgment of the Court of Appeals was correct and in accordance with the Federal Rules of Civil Procedure, and accordingly that the Petition for Certiorari should be denied.

Respectfully submitted,

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